

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

**FILED**  
\_\_\_\_ O'Clock \_\_\_\_ M.

JUL 13 2011

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

SANDRA K MARKHAM, Clerk  
By: Karen Wilkes

Case No. CR 2008-1339

Prescott, Arizona

September 2, 2010

BEFORE THE HONORABLE WARREN R. DARROW

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Trial Day 44)

 **ORIGINAL**

Reported by:

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1 Prescott, Arizona

September 2, 2010

2 \*\*\*

3 BE IT REMEMBERED THAT the above-entitled  
4 matter came on for Trial, Day 44, in the above-entitled  
5 court, on the above-mentioned date, before the HONORABLE  
6 WARREN R. DARROW, Judge of the Superior Court;

7 That the plaintiff was represented by JOSEPH  
8 BUTNER and JEFF PAUPORE, Deputy County Attorneys;

9 That the defendant was represented by JOHN  
10 SEARS, LARRY HAMMOND and ANN CHAPMAN, Attorneys at Law.

11 WHEREUPON, the following proceedings were  
12 had, to-wit:

13 \*\*\*

14 THE COURT: We are on the record in State of  
15 Arizona versus Steven Carroll DeMocker. The defendant,  
16 and all the attorneys are present, the jury is present,  
17 and the witness, Ms. Brown, is on the witness stand  
18 previously sworn. Mr. Paupore, you may continue your  
19 direct.

20 MR. PAUPORE: Thank you, Your Honor.

21 Q. (Continued by MR. PAUPORE:) Good morning,  
22 Alexis.

23 A. Good morning.

24 Q. Yesterday I was asking you about different  
25 categories of weights, grams, and nanograms, and I

1 wanted to, I was a little bit unclear as to how it is  
2 broken down, weight wise.

3 A. Yeah. I was a little unclear on it yesterday as  
4 well. But I've had a chance to recall it and what it is  
5 is one gram equals 1,000 milligrams, one milligram  
6 equals 1,000 microgram, and one microgram equals 1,000  
7 nanograms.

8 Q. Okay. We are in the nanogram category?

9 A. Yes.

10 Q. And, for example, back to Item 603 left  
11 fingernails, the quantity of male DNA was .195  
12 nanograms?

13 A. That's correct.

14 Q. We finished up with your report. We went through  
15 it kind of quickly yesterday in the interest of time.  
16 It was Exhibit 3226, that would be your April 27th  
17 forensic report that we amended.

18 MR. PAUPORE: And I would like, Your Honor,  
19 at this time, to publish this on the ELMO for the jury.

20 THE COURT: And the number again?

21 MR. PAUPORE: Yes. 3226.

22 THE COURT: Thank you. You may do that.

23 MR. HAMMOND: Your Honor, may I confer very  
24 briefly with counsel before he does that?

25 THE COURT: Yes.

1 MR. HAMMOND: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 Q. (Continued by MR. PAUPORE:) Let me know if you  
4 can see that. I think right in front of you is a laser  
5 pointer. Sometimes it works, sometimes you got to shake  
6 it. Can you see this portion, can you see that from  
7 where you are sitting?

8 A. Yes. I can see.

9 Q. We went through Sorenson Item No. 7 all the way  
10 to 18 towards the end of yesterday. Do you recall that?

11 A. Yes, I do.

12 Q. And this is Exhibit, again, 3226, it has been  
13 amended, and I want to point to that page where it was  
14 amended, and we were talking about Sorenson's No. 10B,  
15 left fingernail. Can you see that from where you are  
16 at?

17 A. Yes. I can see it.

18 Q. Okay. You broke it, it's under, on page two of  
19 this, on page three of this exhibit, it's broken down  
20 under Item 10B, with two major paragraphs. That's how  
21 you did it?

22 A. Yes. I made the general conclusion in sort of  
23 the first two sentences and then I spoke to the major  
24 DNA profile in the next paragraph, as you called it, and  
25 I spoke about the minor in the last paragraph.

1 Q. And the first paragraph, I'll point to it with my  
2 pen, it's Y-STR DNA profiles from at least three males  
3 were obtained from this sample?

4 A. Yes.

5 Q. And that's broken down in the second paragraph of  
6 that --

7 A. The second paragraph addresses the major Y-STR  
8 profile we had taken.

9 Q. And we talked about the major, it's an unknown  
10 profile; is that correct?

11 A. Yes.

12 Q. And what was your conclusion as to comparing the  
13 unknown major Y-STR DNA profile with Mr. DeMocker?

14 A. Steven DeMocker was excluded.

15 Q. With comparison to the known sample of Mr. Knapp?

16 A. He was excluded as well.

17 Q. Okay. So next thing, you discuss your  
18 conclusions in paragraph, the one you just read from on  
19 the minor, from the minor mixture of Y-STR DNA?

20 A. Yes.

21 Q. And what were your conclusions again?

22 A. Steven DeMocker and his paternal relatives were  
23 excluded from the minor conclusion, and James Knapp, no  
24 comparison could be made to his reference sample.

25 Q. And this particular paragraph is the one you

1 realized you had interposed the name?

2 A. That's correct.

3 Q. And that was on an earlier report?

4 A. Yes.

5 Q. We next talked about, back to that, Mr. DeMocker  
6 is excluded from the minor mixture and no meaningful  
7 comparisons could be made to Mr. Knapp, and the reason  
8 for that was, were both of those conclusions?

9 A. The exclusion was because there were two  
10 particular places on the DNA where we did not find Mr.  
11 DeMocker's DNA. For James Knapp, no meaningful  
12 comparisons were made because there was a P-course  
13 bonding on our graph to all of his DNA. There was one  
14 location where it may have been his DNA or a stutter  
15 artifact, but I couldn't say one way or the other so I  
16 wasn't able to exclude or include him.

17 Q. Okay. But for purposes, you can't make a match  
18 on this minor mixture to anybody?

19 A. That's correct.

20 Q. Anybody in the universe?

21 A. That's correct.

22 Q. Because not enough DNA information?

23 A. I wouldn't be able to make a statistical, I  
24 wouldn't be able to give weight to that match with our  
25 statistics.

1 Q. We then talked about Item 10C, Sorenson's Item  
2 10C, and that's a swab from Virginia Kennedy's left  
3 hand. And what was your conclusion on that analysis?

4 A. We attended Y-STR profiles from at least three  
5 males, but due to the limited genetic information and  
6 how complex the mixture was, we couldn't make any  
7 comparisons to anyone.

8 Q. So the minor mixture from the swab on the left  
9 hand and the minor mixture from the DNA under her left  
10 fingernail are somewhat similar as far as results?

11 A. We weren't able to make any conclusions.

12 Q. So you had even less genetic information from the  
13 swab on the left hand?

14 A. That's correct.

15 Q. There is no way to know, is there, from the swab  
16 item, swab on the left hand Y-STR, any comparison that  
17 could be made to the minor mixtures under the DNA, under  
18 the left fingernails under item 603?

19 A. No. No comparisons could be made to the left  
20 hand swab.

21 Q. We also talked about, we talked about everything  
22 on this page yesterday, but I just want to go to Item  
23 12, the handset telephone, and what was your findings?

24 A. We got a, we did Y-STR-DNA testing, we got a  
25 mixture of at least two males. We were able to identify

1 a major Y-STR profile and found it was not the same  
2 major that we found on the fingernails. James Knapp and  
3 Steven DeMocker were both excluded as being that major  
4 donor and I believe the minor conclusions are on the  
5 next page.

6 Q. Okay. And then that left sentence of that  
7 paragraph under Item 12 is where you compared the  
8 unknown major found on the handset telephone with the  
9 unknown major profile found under the left fingernail  
10 clippings?

11 A. That's right, right there. It says it does not  
12 match.

13 Q. And that is at least two males on that, in that  
14 item?

15 A. That's correct.

16 Q. Now, we'll go to the minor Y-STR and this is  
17 again on that handset phone, what were your conclusions?

18 A. James Knapp was excluded from the minor component  
19 and we weren't able to draw any meaningful comparison to  
20 Steven DeMocker's profile.

21 Q. How were you able to -- this would actual apply  
22 to another exclusion you had for Mr. DeMocker under the  
23 fingernail. How were you able to exclude Mr. Knapp in  
24 this minor mixture?

25 A. Again, we look at his DNA and we look at the DNA



1     that we got from the profile and determined if there's  
2     DNA present in the positions that represent his DNA.  If  
3     it is present, we can say no meaningful comparisons  
4     because, again, we can't do the statistics on the match  
5     on this minor profile.  But if there are places where  
6     his DNA isn't showing up, we are able to exclude and say  
7     for sure he is not here.

8         Q.  And, conversely, when you say no meaningful  
9     comparisons could be made as to Mr. DeMocker's DNA, how  
10    are you able to come to, arrive at that conclusion?

11        A.  As I said, we look at the reference sample for  
12    the individual at what their DNA profile is, and we look  
13    at the evidence sample DNA profile and see if there is  
14    any places where the DNA sample is not showing up in the  
15    evidence sample.  If there is sufficient evidence that  
16    the individual's DNA is not showing up, they are  
17    excluded.

18        Q.  This is done by an instrument or your examination  
19    of the results?

20        A.  This is examination.

21        Q.  And you're examining the data that comes up from  
22    the genetic analyzer?

23        A.  That's correct.

24        Q.  As part of your review of the file, well, when  
25    Sorenson gets a case it is assigned a case number?

1 A. Yes.

2 Q. And what is the case number in this case?

3 A. I'd have to look at my notes.

4 Q. Let me just show you the exhibit we're talking  
5 about, 3226.

6 A. The case number is T151298.

7 Q. Does that T-number track through the entire file  
8 for this particular client?

9 A. Yes, it does.

10 Q. And reports are generated as data is received  
11 from the client, in this case, the client was Yavapai  
12 County Sheriff's Office?

13 A. That's correct.

14 Q. And the reports are generated at different times  
15 based upon the submission of evidence that your lab  
16 receives?

17 A. That's right.

18 Q. And when, when did you receive the first evidence  
19 from Yavapai County Sheriff's Office?

20 A. It was back in, back in 2008. I don't know the  
21 exact date, but prior to October, though.

22 Q. And did you review those reports?

23 A. The reports from that testing, yes, I did review.

24 Q. Did you author any reports back in 2008?

25 A. No. I, myself, did not.

1 Q. Were they contained within the file that begins  
2 with the T letter?

3 A. Yes.

4 Q. And are they, are these records regularly kept as  
5 a business record of Sorenson?

6 A. Yes.

7 Q. And did you rely and look at these earlier  
8 reports that are, before you began your analysis of the  
9 evidence that you were analyzing?

10 A. I looked at the reports, yes, I did.

11 Q. Did you, when you looked at the reports, what do  
12 you mean by that?

13 A. Well, I read the reports to see what items had  
14 been tested before, to see what conclusions had been  
15 drawn.

16 Q. And did you reference any information, any data  
17 when you were looking at the reports to see if you agree  
18 with the conclusions?

19 A. I did before I came here to testify just so that  
20 I could testify on the previous reports, but not before  
21 I generated my own reports.

22 Q. You were aware of those reports in the general  
23 file?

24 A. Yes.

25 Q. And I'm going to show you what's been marked for

1 identification purposes document Exhibit 3233, and ask  
2 you if you recognize that document?

3 A. This is the first report that was generated in  
4 this case.

5 Q. And is that one of the reports that you had  
6 looked at in preparation for your testimony?

7 A. Yes. I did look at this report.

8 Q. That was the first report that was generated for  
9 Yavapai County Sheriff's Office?

10 A. In this case, yes.

11 MR. PAUPORE: State would offer that exhibit  
12 into evidence.

13 MR. HAMMOND: Objection. Foundation. Your  
14 Honor, may I have voir dire questions?

15 THE COURT: Yes.

16 VOIR DIRE EXAMINATION

17 BY MR. HAMMOND:

18 Q. You had no personal involvement in the  
19 preparation of this report?

20 A. That's correct.

21 Q. You had no personal involvement in any of the  
22 background that went into the creation of this report?

23 A. That's correct.

24 Q. So you had nothing to do with the initial case  
25 consultation?

1 A. That's true.

2 Q. You had nothing to do with the serology?

3 A. That's correct.

4 Q. You had nothing to do with what you call the lab  
5 wet work?

6 A. That's correct.

7 Q. You had nothing to do with the analysis?

8 A. That's true as well.

9 Q. And, indeed, you didn't even read the report in  
10 connection with the work you did on the part that you've  
11 already told us about in connection with what you call  
12 part three?

13 A. No. I did read the report. We did have the  
14 report in the part three case file and I did read the  
15 report. It wasn't, I didn't review the entire case file  
16 until just before coming here to court, though.

17 Q. But it wasn't part of what you needed to do in  
18 order to form the conclusions that you reached for your  
19 part?

20 A. Well, any time we do additional parts we read the  
21 previous reports.

22 Q. I understand that. Answer my question, please.  
23 It had nothing to do with any of the conclusions that  
24 you reached in the report that you've told us about that  
25 has been admitted into evidence?

1 A. That's true.

2 MR. HAMMOND: Your Honor, objection,  
3 foundation, confrontation, Crawford, Melendez-Diaz.

4 THE COURT: Sustained.

5 Q. (Continued by MR. PAUPORE:) That Exhibit 3233,  
6 as a practice at Sorenson Laboratories, when are the  
7 records generated? After analysis is conducted by the  
8 DNA analyst?

9 A. I'm sorry, I don't understand the question.

10 Q. When in time is a report at Sorenson generated  
11 after, for example, when you make an analysis as a DNA  
12 analyst, when do you generate your report?

13 A. We generate the report at the same time as  
14 performing the analysis.

15 Q. Is that pursuant to a protocol at Sorenson?

16 A. We do have a protocol that covers analysis, yes.

17 Q. And are they, are these reports made at or near  
18 the time of the analysis?

19 A. Yes. They usually are in conjunction with each  
20 other.

21 Q. And is the information as generated from the  
22 report made by a person with firsthand knowledge that is  
23 acquired during the analysis?

24 A. Yes. The person who forms the analysis is the  
25 one writing the report. So, yes, they would have

1 firsthand knowledge.

2 Q. And these questions would also apply to the  
3 report that you generated?

4 A. Yes.

5 Q. As part of the regularly conducted business at  
6 Sorenson?

7 A. That's true.

8 Q. The reports, and specifically the reports from  
9 this case made at Sorenson, are kept entirely in the  
10 course of Sorenson's regularly conducted business  
11 activity?

12 A. Yes. It's our regular business to maintain all  
13 case files.

14 Q. And it's your genuine record of what was done in  
15 that case?

16 A. Yes, it is.

17 Q. And is that report making, is that pursuant to a  
18 regular practice of Sorenson?

19 A. Yes. We have a protocol that covers the report  
20 writing as well.

21 Q. And you are the quality assurance manager?

22 A. Yes.

23 Q. And you have access and can have custody at any  
24 time of any of these records?

25 A. Yes.

1 MR. PAUPORE: Your Honor, I would submit  
2 this exhibit under business records exception to the  
3 hearsay rules.

4 THE COURT: Let me see the exhibit, please.

5 MR. PAUPORE: 3233?

6 THE COURT: Yes. Mr. Hammond, if you have a  
7 legal objection, legal grounds.

8 MR. HAMMOND: I do. Two more voir dire  
9 questions and then I'll state the same objection.

10 VOIR DIRE EXAMINATION

11 BY MR. HAMMOND:

12 Q. You were not the technical reviewer on the report  
13 that you have in front of you, 3233?

14 A. Was that the report I was just shown a moment  
15 ago?

16 Q. Yes.

17 A. Yes. That's correct.

18 Q. Nor were you the administrator reviewer?

19 A. No. I was not.

20 Q. In fact, you had no involvement in the  
21 preparation of this report in any way?

22 A. Just other than reviewing it before I came to  
23 court. That was it.

24 Q. Contemporaneously or any time near the  
25 preparation of this report in October of 2008 you had no



1 involvement, indeed, you even had no knowledge that it  
2 was going on?

3 A. That's correct.

4 MR. HAMMOND: Your Honor, same objection.  
5 Confrontation, Crawford Melendez-Diaz, it's hearsay and  
6 inappropriate under that body of casework.

7 THE COURT: Mr. Paupore, do you have a legal  
8 response?

9 MR. PAUPORE: I would like to ask the  
10 witness one more question.

11 THE COURT: Okay.

12 Q. (Continued by MR. PAUPORE:) Did you rely on the  
13 report that we're talking about in any way for your  
14 examination that was done after that report was made?

15 MR. HAMMOND: Asked and answered.

16 THE COURT: Overruled.

17 THE WITNESS: The only information that I  
18 discerned from the previous, from the two reports in  
19 October were to see that we'd already tested item seven  
20 and 8 previously and that was why the extract was  
21 consumed, and to view the results of the extract that we  
22 previously tested from Arizona for the washer hose to  
23 try to explain why we didn't test it again.

24 Q. (Continued by MR. PAUPORE:) We discussed that  
25 yesterday in item Exhibit Number 3226?

1 A. Correct.

2 Q. So you went back and looked at the October, at  
3 the earlier reports to see what was done?

4 A. Right. Those two previous reports.

5 MR. HAMMOND: Your Honor, excuse me. May I  
6 have her answer the question without revealing the  
7 contents of the document?

8 THE COURT: Yes.

9 Q. (Continued by MR. PAUPORE:) Do you remember the  
10 question?

11 A. Could you repeat the question?

12 Q. Did you go back and look at the earlier October  
13 reports when you were preparing your conclusions for the  
14 April 27th report that is in evidence?

15 A. Yes, I did.

16 MR. PAUPORE: Your Honor, I believe this  
17 satisfies the business exception to the hearsay  
18 objections, that and other objections legally that Mr.  
19 Hammond has made.

20 THE COURT: Let me have a sidebar.

21 (Whereupon, a sidebar conference is held off the  
22 record.)

23 THE COURT: Thank you, ladies and gentlemen.

24 Q. (Continued by MR. PAUPORE:) Alexis, I'm going to  
25 have you take a look at what has been marked as Exhibit

1 3236 and ask if you can identify it.

2 A. This was the, this is the report that was  
3 generated for the fiber, which was reported to us to be  
4 a hair.

5 Q. Well, before you say anything from that document,  
6 did you look at that report and rely on that report in  
7 preparing your April 14th and amended April 27th report?

8 A. Yes, I did. I took this exact same wording and  
9 added it to my report.

10 Q. So, in fact, it is already included in your April  
11 reports?

12 A. Yes, it is.

13 MR. PAUPORE: State would offer Exhibit  
14 3236.

15 MR. HAMMOND: No objection.

16 THE COURT: 3236 is admitted.

17 Q. (Continued by MR. PAUPORE:) I'm going to show  
18 you, Alexis, Exhibit 3224, this document, and ask if you  
19 can identify that document.

20 A. Yes. This is a report that I prepared. The date  
21 is April 13th, 2010.

22 Q. And is that your signature on the back of it?

23 A. It is.

24 Q. And that was your report, written report and  
25 results from your analysis that are contained in there?

1 A. Yes. That's correct.

2 MR. PAUPORE: State would offer that report  
3 into evidence.

4 MR. HAMMOND: No objection.

5 THE COURT: 3224 is admitted.

6 MR. PAUPORE: Mr. King, if you would be so  
7 kind.

8 Q. (Continued by MR. PAUPORE:) First I'm going to  
9 have you look at, Alexis, 3236, and can you see that  
10 from where you are at?

11 A. Yes. I can see it.

12 Q. That's a report dated March 11th, 2010?

13 A. Yes.

14 Q. That was actually done by whom?

15 A. That was completed by Stephanie Masters.

16 Q. And Stephanie Masters works at Sorenson's  
17 Forensic?

18 A. Yes, she does.

19 Q. Is she one of the individuals that you supervise?

20 A. Yes.

21 Q. And the exact wording of this, of Stephanie  
22 Masters' analysis is incorporated into your April 14th  
23 and April 27th, 2010, reports?

24 A. Yes. That's correct.

25 Q. And what can you tell us from this document as to

1     what was done and what was concluded?

2           A.   It's the same conclusion that we spoke of  
3     yesterday regarding this item.   This was an item that  
4     was reported to us to supposedly contain a hair.   When  
5     Stephanie opened the item, all she found was a fiber.  
6     So, the conclusion is no apparent material of biological  
7     significance, no testing was performed on this item.

8           Q.   That was the end of that analysis?

9           A.   Yes.

10          Q.   Did Yavapai County Sheriff's Office submit to you  
11     a number of buccal swabs for testing?

12          A.   Yes, they did.

13          Q.   Did you actually do the analysis of the results  
14     from the testing?

15          A.   Yes, I did.

16          Q.   And we talked about Exhibit 3224 and this is  
17     dated April 13th, 2010?

18          A.   Yes.

19          Q.   And, again, is that your signature on the bottom  
20     of the page?

21          A.   Yes.   Yes, it is.

22          Q.   And can you tell us what this all means?

23          A.   This is just a list of the evidence that we've  
24     received.   It's got our Sorenson item number, it has got  
25     the agency ID number, and the third column there is a

1 description of the item. One is the reference. We  
2 include the word reference and use the first initial of  
3 the individual's name and then their last name to  
4 identify who the reference sample came from.

5 Q. Without mentioning the name, I'm just going to  
6 pick, say, number 25, Sorenson item number 25, can you  
7 see that?

8 A. Yes.

9 Q. Go through the steps of what was done with item  
10 25.

11 A. For DNA analysis or for the DNA test?

12 Q. For both, for the -- how were you able to arrive  
13 at a conclusion?

14 A. It's the same process that we spoke about  
15 yesterday. We extract the item, quantitate it, amplify  
16 it, run it through the genetic analyzer, and then I  
17 interpret the data, compare the profile that's obtained  
18 from these reference items to the evidence items.

19 Q. These are, the reference, the samples were all  
20 buccal swabs?

21 A. As far as I'm aware. I would have to check the  
22 notes to be sure, but I believe they all were.

23 Q. That's your understanding?

24 A. That's my understanding.

25 Q. So all the individuals on the right-hand column,

1 DNA was obtained and analyzed?

2 A. Yes.

3 Q. And what was the, what was the DNA compared to?

4 A. We were requested to compare this to the major  
5 DNA profile, to the fingernail clippings.

6 Q. Were you able to come to any conclusions after  
7 that comparison?

8 A. Yes. None of these individuals matched that  
9 major Y-STR DNA profile.

10 Q. Go to page two on there. Again, these are  
11 reference samples of, we talked about 25, is that pretty  
12 illustrative of all of the results that you obtained on  
13 the rest of these reference samples?

14 A. Yes. The results were identical. For every  
15 reference sample they were all excluded.

16 Q. Your results, conclusions, and opinions are  
17 stated on the bottom?

18 A. Yes.

19 Q. And that's where it mentions you did the  
20 comparison to the DNA found under 603?

21 A. That's correct.

22 Q. Was there any comparison made to the major found  
23 on the handset telephone?

24 A. No. At the time that we received the request to  
25 test these reference samples, the request was to compare

1 to the major on the fingernail clippings and we had not  
2 yet completed the testing on the handset telephone.

3 Q. And after you completed the testing on the  
4 handset telephone, was there then a comparison done?

5 A. No. That was not requested of us.

6 Q. Not requested by the agency?

7 A. Not that I'm aware of.

8 Q. Directing your attention back to the April 27,  
9 2010, report, and the April 14th, report, the 27th  
10 report is exhibit number, again, for the record -- what  
11 did I do with it -- Exhibit 3226, directing your  
12 attention back to that area under the left fingernail  
13 where you transposed the names of Mr. Knapp and Mr.  
14 DeMocker?

15 A. Yes.

16 Q. Is there a protocol that requires you, requires  
17 Sorenson Laboratory to do a, to do something when  
18 something like this occurs in one of your reports?

19 A. Yes. We do have a protocol that addresses if a  
20 report needs to be amended due to an error, there has to  
21 be a corrective action.

22 Q. And was that done in this case?

23 A. Yes, it was.

24 Q. And can you explain how a corrective action  
25 report is made and generated?



1       A. Certainly. We have a protocol that directs us  
2 how to perform a corrective action. We have a specific  
3 document that we have to fill out where we have to  
4 explain what happened, what we feel is the root cause  
5 after investigation, if need be, as to why that  
6 happened, as well as what our corrective action will be  
7 to make sure that doesn't happen again in the future.

8       Q. Was that done in this case?

9       A. Yes, it was.

10      Q. Did you have any involvement in that corrective  
11 action report?

12      A. My DNA technical leader completed that report,  
13 that form I should say, but he did ask me my versions of  
14 the event of what happened and why I felt that the error  
15 occurred, and I did provide that to him.

16      Q. And why do you think that you made that mistake?

17      A. I believe I was rushed to write the report. I  
18 only had three days to generate it and review it. At  
19 the time that we received the request, although the DNA  
20 testing portion of it had been completed, the paperwork  
21 was not all complete and I can't complete the case file  
22 until the paperwork is complete. So, I had to wait  
23 almost a full day for that paperwork to be completed and  
24 I was not able to get the report completed and written  
25 up within one day, it took me a day and a half, which

1     only gave a half a day for the review. So, I believe it  
2     was just being rushed to get this report done when we  
3     were operating under the impression we were going to  
4     have an entire week to complete this report and to do  
5     the review, and then it got changed to three days at the  
6     last minute.

7         Q. Has this ever happened to you before?

8         A. No. It has not.

9         Q. And on the reports that you normally have more  
10        time on, what would have happened if you had more time  
11        on this report?

12                 MR. HAMMOND: Objection. Calls for  
13        speculation.

14                 THE COURT: Overruled. You may answer that.

15                 THE WITNESS: It actually states in our  
16        corrective action that we can't guarantee if this error  
17        had occurred that it would have been caught. But, of  
18        course, the chances are much more likely that, first of  
19        all, it would not have been made, but also would have  
20        been caught had we had proper time to do the review.

21         Q. (Continued by MR. PAUPORE:) After you author the  
22        report, and I'm talking now about your April 27, 2010,  
23        report, do you actually type up the data that's in that  
24        report yourself?

25         A. Yes, I do.

1 Q. And then after you do that, after it's complete,  
2 completely typed up, what happens to it next?

3 A. I print it out, put it in the case file, then I  
4 look through all the paperwork in the case file and do  
5 what's called a self-review, where I insure that all the  
6 documents in the case file are correct and complete. We  
7 have a checklist of all the different self-review duties  
8 that we have to complete.

9 Q. And after that's, after you do your self-review,  
10 is there a next step in the process of this report?

11 A. Once the self-review is complete, then it moves  
12 on to a technical reviewer who is another qualified DNA  
13 analyst who looks through the reports and the testings  
14 and makes sure that they agree with the results of the  
15 tester.

16 Q. This technical reviewer is this person, does this  
17 person have the same credentials and same qualifications  
18 as you have?

19 A. May not be identical to mine, but they do meet  
20 the FBI requirements to be a DNA analyst and they are  
21 trained at our laboratory.

22 Q. So it is a safety check by another analyst?

23 A. Yes. It is to make sure that the results that  
24 the analyst has come to are within appropriate, are  
25 appropriate findings and comply with our requirements.

1 Q. Do you analyze other analyst's findings?

2 A. Yes, I do.

3 Q. In that same process that we're talking about?

4 A. Yes.

5 Q. Is that required of every single report at  
6 Sorenson?

7 A. Yes, it is.

8 Q. After the technical review, is there something  
9 else that happens to your report?

10 A. Yes. After the technical review, the case file  
11 then passes on to an administrative reviewer who is  
12 supposed to look for typos and misspellings and things  
13 of that nature.

14 Q. And was that done in this case?

15 A. Yes, it was.

16 Q. So the switching of the names carried through the  
17 safety check phases of your organization, basically?

18 A. Yes, it did.

19 Q. So your technical reviewer missed your error?

20 A. Yes.

21 Q. And your administrative reviewer missed the  
22 error?

23 A. Yes.

24 Q. Was that covered in that corrective action that  
25 you told about, each one of those stages?

1       A. I don't know if they are specifically addressed  
2 separately, but it does state that both the report  
3 writing and the review phases were rushed and that was  
4 the root cause.

5       Q. So the root cause was determined to be rush?

6       A. There was actually two root causes, one was the  
7 rush and the second we have a manual reporting method  
8 where I have to sit down and hand-type everything,  
9 there's no system to help us compile these reports, it's  
10 all hand-typed.

11      Q. Let's talk a little bit -- well, I want to go  
12 back on something to make sure it's clear. We talked  
13 about CODIS yesterday?

14      A. Yes.

15      Q. And we talked about how Y-STR reports are not  
16 part of the CODIS databank?

17      A. Correct.

18      Q. What about STRs?

19      A. Yes. Those would be the profiles that are  
20 entered into CODIS.

21      Q. And, again, you said at Sorenson because it is a  
22 private lab you do not have the ability to enter  
23 qualified STR profiles into the CODIS databank?

24      A. That's correct.

25      Q. Who must do that?

1       A. That has to be done. Ordinarily, it's done by  
2 the state laboratory of where the testing was requested.  
3 So, for example, if the Yavapai County Sheriff's Office  
4 asks us to perform testing, we obtain an STR profile,  
5 they have to go to the Arizona Department of Public  
6 Safety and ask them to update the profile.

7       Q. So, for the major unknown profile found on item  
8 603, the fingernails, and the major profile found on  
9 that handset telephone, that data goes to the law  
10 enforcement agency that submitted the evidence?

11      A. Yes. The results are ordinarily submitted to the  
12 agency that requested the testing.

13      Q. And it's up to that agency to request that it be  
14 entered into the CODIS databank?

15      A. That's correct. They can request it, but it's up  
16 to the Arizona Department of Public Safety if they will  
17 actually enter it.

18      Q. And that's a decision made by that agency?

19      A. That's correct.

20      Q. Do you know if the two unidentified major  
21 profiles that you talked about here were entered into  
22 CODIS?

23      A. Those are Y-STR DNA profiles, so they are not  
24 CODIS eligible. From what I said before, as I  
25 understand, Y-STR profiles can be put into CODIS and

1 stored there, but they can't be searched again. So, I  
2 don't know if they opted to do that or not.

3 Q. And, again, we discussed why it is difficult to  
4 try to find somebody in the Y-STR profile?

5 A. Right.

6 Q. Be all males, cousins and male relatives --

7 A. Correct.

8 Q. -- would be involved? Let's talk a little bit  
9 next about touch DNA. Are you familiar with that term?

10 A. Yes, I am.

11 Q. And have you read articles in your field that  
12 discuss this touch DNA issue?

13 A. Yes, I have.

14 Q. And I think you explained a little bit yesterday,  
15 but tell the jury how touch, how someone's DNA can end  
16 up on somebody else by touching.

17 A. When you come into contact with another  
18 individual, it's actually covered by Locard's Principle.  
19 We learn about it in, basically, all forensics field  
20 there will be a transfer of some kind of material  
21 between the two of you. In the case of DNA testing  
22 there can be a transfer of cells from one person to  
23 another. When you physically touch somebody you can  
24 have skin cells that slough off of your hands when you  
25 are speaking to them. It is kind of gross. But when we

1 speak to each other, we are kind of spitting on each  
2 other, I know it is kind of gross, but you are, you may  
3 take their cells from the inside of their mouth and end  
4 up with those on your face or your clothing or other  
5 body parts.

6 Q. So, let's say that I go into a grocery store and  
7 I grab a cart, a grocery cart and I ignore that little  
8 wipe thing that's hanging there by the, I think I know  
9 what they are there for now, but that is hanging by the  
10 grocery carts. I just grab the cart and head off into  
11 that store. That handle of that grocery cart hadn't  
12 been wiped or sanitized in any way. Would you expect to  
13 find my DNA on that handle of that hand cart?

14 A. It's hard to say if you can expect to find it.  
15 Different people, it's called being a shedder. Some  
16 people shed skin cells much more easier than others.  
17 Sometimes it depends on if you recently washed your hand  
18 or if you use lotion or if you sweat or if you have oily  
19 hands. There's all kind of factors that go into saying  
20 whether or not you could expect to find somebody's DNA  
21 profile, but you certainly could.

22 Q. You said shedder, you said that yesterday, how is  
23 that spelled?

24 A. I believe it is S-H-E-D-D-E-R.

25 Q. People shed hair?



1 A. True.

2 Q. Do they shed at the same rate as they do DNA  
3 cells? Do you know?

4 A. I don't know.

5 Q. I was just wondering for my own personal  
6 standpoint. So, the shedder concept really depends on  
7 the personal habits and hygiene, hygiene of every  
8 individual person?

9 A. That's a great factor, also, just your natural  
10 biology as well.

11 Q. Let's say the same grocery cart was used by a  
12 mother that had four kids and she pushed it around for  
13 45 minutes in the grocery store, hanging onto the hands  
14 of her children and she had one of her babies sitting  
15 like they put them in the golf, put them in the grocery  
16 cart, you know, the baby is hanging onto the handle,  
17 they didn't wash their hands that day and there was no  
18 lotion on their hands. I come along, grab that same  
19 cart and I'm the same way, I haven't washed my hands, I  
20 don't have any lotion on them and I walk around that  
21 grocery store for 45 minutes looking for things. If you  
22 were able to, what would you do then to try to find my  
23 DNA on that or even the mother's DNA for that matter on  
24 that same grocery cart handle?

25 A. The only thing we can do is to swab it and

1 attempt to obtain a DNA profile. We can amplify a  
2 little more DNA than we typically could because we can  
3 expect that there is going to be more than one person's  
4 DNA on there. Our current DNA targets are based on one  
5 person's DNA, so we can amplify more to try to get both  
6 donors or however many donors to show up as much as  
7 possible.

8 Q. Would it come to a surprise to you if you swabbed  
9 it and from your testing you found mixtures of DNA?

10 A. On commonly touched items like grocery cart  
11 handles, door knobs, things of that nature, it is not at  
12 all a surprise to obtain a mixture. In fact, it happens  
13 more often than not.

14 Q. And let's say that I'm in the same grocery store,  
15 same grocery cart that the mom used with the four kids  
16 before me, and I walk around holding on to the grocery  
17 cart and there's a security camera that captures me in  
18 the grocery store pushing this very cart. You run your  
19 swab on that handle and because I don't shed DNA like I  
20 shed my hair, you don't find my DNA on that handle.  
21 Does that, has something like that ever occurred in your  
22 experience?

23 A. It's a possibility. I know of one case very  
24 similar to that that I worked that was a burglary. They  
25 had the burglar on tape, opening up a cooler at the

1 convenience store with his forearm and grabbing a case  
2 of beer. They swabbed the handle of that cooler and we  
3 got a mixture. Actually, they were able to exclude him  
4 from that mixture. So, his DNA did not show up, it  
5 wasn't detectable in the presence of all the other  
6 people that had turned the door handle.

7 Q. Was there a security camera that this individual  
8 robber was captured on?

9 A. That was the information we were given, yes.

10 Q. So you could actually see him opening up this  
11 cooler?

12 A. That was the information we were given.

13 Q. And you couldn't find his DNA?

14 A. That's correct. We were actually able to exclude  
15 him.

16 Q. Exclude him?

17 A. Yes.

18 Q. So there must have been enough information in the  
19 mixture that you could do that?

20 A. Yes.

21 Q. And you actually had the suspect's DNA to compare  
22 it with?

23 A. Yes, we did.

24 Q. Next I want to discuss a little bit about  
25 mixtures of DNA profiles and fingernail samples that are

1 taken from couples who cohabitate. Are you familiar  
2 with, in doing and keeping up with your reading on the  
3 advances in your field of any test or any test being  
4 done on that kind of a situation, DNA profiles from  
5 fingernail samples taken from couples who cohabitate?

6 A. There was an article that --

7 MR. HAMMOND: Objection. Your Honor, may we  
8 have the witness answer the question that Mr. Paupore  
9 asked with yes or no, which was the question are you  
10 aware.

11 THE COURT: It was a yes or no question,  
12 initially, and you may answer that question.

13 THE WITNESS: Yes, I'm aware.

14 Q. (Continued by MR. PAUPORE:) And do you know the  
15 name of where this study was conducted?

16 A. The study was conducted in the United Kingdom by  
17 the Forensic Science Service.

18 Q. By the who?

19 A. Forensic Science Service.

20 Q. Are you familiar with that service?

21 A. Yes, I am.

22 Q. What is that service?

23 A. In England they have a private entity that does  
24 all the DNA testing for their entire country and they  
25 call it the Forensic Science Service. So, it would be

1     like the FBI if the FBI were a private company.

2           Q.   And what was the study, how did the study work?

3           A.   This was a study of 12 people that lived  
4     together, male and female, and the study --

5                   MR. HAMMOND:   Your Honor, could I interrupt  
6     and ask for some foundation and ask a couple voir dire  
7     questions?  She's actually testifying about a study that  
8     is not in evidence, that hasn't been identified as  
9     anything other than having been done, as she says, in  
10    the United Kingdom.

11                   THE COURT:   If you want to ask some voir  
12    dire questions, you may.

13                               VOIR DIRE EXAMINATION

14   BY MR. HAMMOND:

15           Q.   Where was the study done?

16           A.   It was done in the United Kingdom.

17           Q.   Really?  Where in the United Kingdom?  The United  
18    Kingdom is a huge place.

19           A.   I don't know the exact location.

20           Q.   Was it done in Glasgow, Scotland?

21           A.   As I said, I don't know the exact location.

22           Q.   When was it done?

23           A.   December 2009.

24           Q.   In what journal was it reported?

25           A.   I believe it was the Forensic Science

1 International. I would have to look to be sure. I have  
2 the article with me. I could look to be sure.

3 MR. HAMMOND: Your Honor, the article itself  
4 would be the best evidence. Having her testify about an  
5 article that she's read, I think, is not proper, it's  
6 hearsay.

7 THE COURT: You are making an objection?

8 MR. HAMMOND: That is the objection.

9 THE COURT: What is the specific rule that  
10 you would cite?

11 MR. HAMMOND: Foundation and it is hearsay.  
12 I can ask her additional questions about her expertise  
13 in this field, but I think she would tell us that she is  
14 not an expert in the collection and transfer of DNA  
15 under fingernails.

16 THE COURT: Counsel, there are a couple of  
17 legal matters I want to take up. I would like to go  
18 ahead and take the morning recess at this time, if we  
19 could do that, Mr. Paupore?

20 MR. PAUPORE: Yes, Your Honor.

21 THE COURT: We'll do that. Ladies and  
22 gentlemen, remember the admonition and follow it in this  
23 respect, Ms. Brown you will be excused for a recess as  
24 well and remember the exclusion of witnesses have been  
25 invoked. Please be ready to return at 10:45. So please

1 reassemble at that time. I ask the parties to please  
2 remain. Thank you.

3 (Whereupon, the jury is excused.)

4 THE COURT: On the record with the defendant  
5 and the attorneys present, the jury is not present. We  
6 are going to take up a related issue. There was an  
7 objection to hearsay, Mr. Hammond, and I was going to  
8 ask you if you have the exact rule of evidence that you  
9 were invoking.

10 MR. HAMMOND: Are you talking about the  
11 fingernail issue?

12 THE COURT: I should have said the latter.  
13 I believe we have two issues to address, the latter of  
14 the two.

15 MR. HAMMOND: My objection, as I stated it,  
16 was, first of all, she has not been established that  
17 she's an expert in this field. If she were an expert on  
18 this particular issue, this is an important question, on  
19 the transfer of DNA under fingernails, which obviously  
20 we've seen analysis in other fields, it is a pretty  
21 important topic. If we ask, she will say she's not,  
22 she's never done a study herself, she's never done any  
23 kind of systematic review in the field.

24 So, she's not an expert and she can't  
25 testify based upon having just read one article in a

1 field. She is not an expert. That is 702. The article  
2 itself, if she is not an expert, is hearsay. You can't  
3 have a witness get on the stand and say I read an  
4 article and let me summarize it for you. That is just  
5 hearsay. That's the basis of my objection.

6 THE COURT: And that will be a basis to  
7 sustain, but I haven't heard from Mr. Paupore on the  
8 response and I'll give you the opportunity.

9 MR. PAUPORE: Thank you. Under 703 the  
10 basis of opinion testimony by experts, experts can  
11 reasonably rely upon opinions by other experts in a  
12 particular field in forming opinions or inferences upon  
13 the subject. The facts or data need not be admissible  
14 in evidence in order for the opinion or inference to be  
15 admitted. Facts or data that are otherwise inadmissible  
16 should not be disclosed to the jury by the proponent,  
17 but, nevertheless, the expert can reasonably rely upon  
18 published articles in her field, and this is a published  
19 article in her field that she reads.

20 She indicated yesterday under her  
21 qualifications that she reviews published articles in  
22 her field on a regular basis and she had reviewed this  
23 particular study. She does not have to be an expert on  
24 the transfer of the phenomenon of DNA, but she can  
25 certainly look at it and draw inferences from it and it



1 does qualify under Rule 703 as a published scientific  
2 article that this expert has read and has knowledge  
3 about. I'm not going to be admitting the report itself,  
4 because I agree with Mr. Hammond that it would be  
5 hearsay.

6 MR. HAMMOND: Your Honor, this witness did  
7 not rely on this article in any way to draw any  
8 conclusion she has yet made in this case. I know from  
9 the interview that we've had with her, and if we want to  
10 put her on the stand I know she would say, and Mr.  
11 Paupore would agree that she has no experience in DNA  
12 collection. She has not been involved in that phase of  
13 DNA related work and she certainly has never done any  
14 work in the field of transfer of DNA from the  
15 fingernails of human beings. She was unaware of the  
16 article at the time of her interview.

17 We brought this article to the attention of  
18 the prosecution. They, apparently, gave it to her  
19 sometime after her interview and now would like to have  
20 her rely on it. There may be experts who can do that  
21 because they're experts in the field, but she is just  
22 not one of them. So, as to her, this is entirely  
23 hearsay. She's just the wrong witness.

24 MR. PAUPORE: Your Honor, the witness  
25 testified that she is involved in all aspects of the DNA

1 analysis, including serology and the extraction  
2 amplification and quantification in all stages, she's  
3 worked in all of those areas. She can certainly use a  
4 published article in her field to base an opinion upon,  
5 according to Rule 703, that's why it is in there, that's  
6 what she, she doesn't, she has cases that she's talked  
7 about, cases where there are mixtures. On the golf  
8 cart, the golf cart, I mean the grocery cart example, we  
9 were talking about transfers of DNA on items that were  
10 touched by two people in the hypothetical.

11 THE COURT: She's testified as an expert  
12 from DNA analysis and made comparisons of being in  
13 dispute and her qualifications there. She has testified  
14 about transfer with hypotheticals from Mr. Paupore, as  
15 indicated, and about her knowledge in that regard.

16 MR. HAMMOND: Your Honor, there's a huge  
17 difference -- if this is what is on your mind, there's a  
18 huge difference between the basics of DNA transfer,  
19 touch DNA, and that's why I allowed those questions to  
20 go on. I would say that people in the field do have a  
21 basic understanding of basic touch DNA, but when you get  
22 into the specialized fields of DNA collection, the  
23 deposit and collection of DNA under fingernails or in  
24 vaginas or on pubic hairs, those are, everyone  
25 recognizes in this field very specialized things that

1 people do study and there may be even somebody at  
2 Sorenson who has studied this, but she has not.

3 THE COURT: There is a number that is shown  
4 here that I can make a ruling as far as way things stand  
5 here. Dr. Keen was committed to testify just very  
6 generally about what might happen, but this is rather  
7 specialized, at least that is what I am being told, and  
8 I haven't had that refuted. So, it comes down to  
9 foundation at this time as to whether or not she can  
10 provide proper foundation for being able to testify with  
11 regard to transfer involving fingernail clippings, if  
12 she has that type of qualification and what's the basis.  
13 So, if she can provide that foundation then I would  
14 consider that.

15 The other thing we're getting into, Article  
16 803.18 is specific about what you can do with that in my  
17 view and what can be read and what can't, and then  
18 there's the other rule that the attorneys have been  
19 citing about what can be relied on. When that's the  
20 case, that just doesn't automatically come into evidence  
21 either, when it's a situation of when an expert witness  
22 is relying on information, that experts in that field  
23 reasonably rely on. There hasn't been any foundation  
24 with regard to that either. Where it stands right now  
25 the objections are sustained. There's another issue

1 with regard to one report and that is the offered  
2 Exhibit 3233, I think.

3 MR. BUTNER: Excuse me.

4 THE COURT: Mr. Butner?

5 MR. BUTNER: I was speaking with Mr.  
6 Paupore.

7 THE COURT: We had a brief sidebar. I  
8 didn't want to go into that extensively. I want it on  
9 the record. 3233 is an underlying report. Mr. Paupore  
10 did offer the items that are listed as necessary to  
11 receive into evidence a record of regularly conducted  
12 activity, the areas were generally covered, but I'll ask  
13 Mr. Hammond, do you dispute that Mr. Butner covered  
14 what's required in 803.6, recognizing that does not in  
15 any way end the consideration of this piece of evidence?  
16 Do you acknowledge that?

17 MR. HAMMOND: Yes. That's the root of the  
18 problem. I mean, that's what --

19 THE COURT: Okay. I just want to make sure  
20 you didn't have a technical objection to the foundation  
21 under 803.6.

22 MR. HAMMOND: I think it is hearsay,  
23 frankly, and I don't think she, I think she testified  
24 that she didn't rely on it in doing her reports. In  
25 fact, she was entirely unaware of that work. But,

1     frankly, Judge, I don't think it matters.

2             THE COURT:   For, yeah, going back and forth  
3     between 703 and reading it and it coming in in that  
4     fashion.

5             MR. HAMMOND:   If you are just asking the  
6     basic question is it a business record, I don't dispute  
7     that it is a business record.   That may have been your  
8     question.

9             THE COURT:   Yes.   I just wanted to see if I  
10    can't move on from whether or not there was some  
11    technical objection.

12            MR. HAMMOND:   Sure.   That is where the  
13    Supreme Court started with Crawford and Melendez-Diaz.

14            THE COURT:   The Crawford issue talks about  
15    testimonial statements and then you have to make that  
16    kind of analysis, are these reports, are they  
17    statements, are they containing statements, do they  
18    contain assertions?   If you look at definitions on the  
19    hearsay statement, what a hearsay statement is, probably  
20    so, are they prepared for litigation, there's that  
21    analysis that goes into it, apparently.   It seems to me  
22    that gets you into Crawford considerations, but I  
23    haven't, we didn't explore this because I wanted it on  
24    the record, I didn't want to repeat it, the jury has had  
25    enough time while they're waiting, while we're waiting

1 for legal matters and I know these are important  
2 matters. That is why I brought it up. I didn't bring  
3 it up. Mr. Hammond made an objection that included the  
4 Crawford issue. It seems to me if you talk about  
5 testimonial statements and concerns with confrontation,  
6 it is a concern. Mr. Paupore?

7 MR. PAUPORE: Your Honor, I'm not going to  
8 tell the court that these are not statements and  
9 conclusions and I was trying to get the reports admitted  
10 under the business records exception. The witness has  
11 established foundation thus far, but can Mr. Hammond  
12 cross examine the author of these reports if they're put  
13 into evidence and the answer is no, he cannot.

14 THE COURT: And are you still wanting to  
15 offer them over that observation?

16 MR. PAUPORE: No. Your Honor, I think I  
17 concede with that statement.

18 THE COURT: Then --

19 MR. PAUPORE: I would like to visit back on  
20 that touch DNA, I believe this witness is imminently  
21 qualified to talk about touch DNA. That is what she  
22 does. She was a serologist. She said she was a  
23 serologist with Louisiana Police Department. She does  
24 serology. She supervised people that do serology. It  
25 involves touch DNA, it involves biological DNA. That's

1 her field. The fact that she can examine door knobs,  
2 smooth surfaces, golf --

3 MR. BUTNER: Grocery carts.

4 MR. PAUPORE: I probably want to be golfing  
5 today.

6 THE COURT: Mr. Paupore, if you can provide  
7 that kind of foundation you can attempt to do that. I'm  
8 not making any kind of judgment on that at all. At this  
9 point, from what I've heard, I've sustained the  
10 objection on foundation. If she has the specialized  
11 knowledge to talk about transfers and fingernail  
12 clippings and she has familiarity, I don't want to go  
13 any further. The rules are there for people to read.  
14 Mr. Hammond?

15 MR. HAMMOND: Your Honor, I think we can  
16 establish pretty quickly with her that if you ask the  
17 questions about whether you can transfer DNA or whether  
18 it's meaningful or likely that DNA would be transferred  
19 by clippers or transferred by incidental communication,  
20 she knows nothing about that. The state would like to  
21 have her testify, sure, all of these things can happen.  
22 You could have gotten DNA under your fingernail because  
23 of clippers or because of some other contact, but she  
24 has never studied in that field. I don't even think  
25 she's ever done a case that involved the transfer of DNA

1 under fingernails, and, if she has, it may have been one  
2 case and it would have been in the last few months, but  
3 she certainly has not been offered as an expert in this  
4 field, in this very specific and important field.

5 I would rather not have to do this in front  
6 of the jury. If Mr. Paupore wants to bring her back in  
7 right now and ask her questions out of the presence of  
8 the jury or I'll ask her out of the presence, fine, but  
9 I don't think this is a closed question. I think she'll  
10 acknowledge that she has no expertise that field.

11 THE COURT: That would close the issue right  
12 there if she says, no, I really can't talk about this  
13 very specialized aspect of transfer, that what Mr.  
14 Hammond is saying is a very specialized aspect of DNA  
15 transfer, that would close the matter right there, I  
16 think. Mr. Paupore can ask the question.

17 MR. PAUPORE: Mr. Hammond and I agree we are  
18 180 degrees apart on this. If the DNA wasn't  
19 transferred under left fingernail, it wasn't  
20 transferred, it had to be transferred. It had to be  
21 transferred on the phone. The phone was touched, it had  
22 to be transferred, how else is it going to get there.  
23 It is that basic. I don't believe it is a specialized  
24 field at all.

25 THE COURT: In the interview did they make



1 any statements about this kind of transfer?

2 MR. HAMMOND: No. She had no opinions about  
3 how the DNA got under this fingernail. We spent two  
4 days with her.

5 MR. PAUPORE: I'm not going to ask her how  
6 she has an opinion on how it got under there, that was  
7 not where I was going with the examination.

8 THE COURT: Then I don't see the basis to  
9 get into what underlies a non-opinion. There has to be  
10 an opinion and then there's a question of what has to be  
11 revealed or what might be admitted as the basis for the  
12 opinion, if we're talking about 703. If you're under  
13 803.18 you have a whole range of other considerations,  
14 that is why you --

15 MR. PAUPORE: She can give an opinion that  
16 the DNA was transferred?

17 THE COURT: It was. That has to. Mr.  
18 Hammond just pointed that out.

19 MR. PAUPORE: And the study that she was  
20 talking about is about transfer of DNA from touch.

21 THE COURT: Without the presence of the jury  
22 and the witness here, what does the study conclude, Mr.  
23 Hammond? You said you brought this up.

24 MR. HAMMOND: The study is a terrific study,  
25 it is not conclusive. It was a study done in Scotland

1 where they took some couples and have those couples have  
2 undisclosed but intimate contact with each other for a  
3 period of time. They had other people who did not have  
4 intimate contact and then they clipped the nails of both  
5 groups after some period of time and they did DNA  
6 testing on, there may have actually been more than two  
7 groups, but they did group testing to see if they could  
8 tell whether or not you would get a significant quantity  
9 of DNA under your fingernails from idle touch  
10 communication, the kind of thing that might happen if  
11 you were just in the same grocery store or same office.

12 They compared those with the people who had  
13 had intimate contact and then found that people who had  
14 intimate contact are much, much more likely to have  
15 significant quantities of DNA under their fingernails,  
16 but it's a very important area and very important law  
17 enforcement. I don't want to tell them how to do their  
18 job, but they should not be messing around with this.  
19 It is very important stuff.

20 THE COURT: It appears that you were  
21 mentioning this article at some point. I don't know. I  
22 won't ask anything further, but is it required as  
23 disclosure?

24 MR. HAMMOND: Yes. We have a person who has  
25 expertise in this field.

1           THE COURT: I'm just puzzled as to why you  
2 would be concerned about this favorable study being  
3 mentioned at this time.

4           MR. HAMMOND: I don't think she understands  
5 it. This is a person, I don't know what she would say  
6 about it, Your Honor, but I doubt that she has really  
7 understood that study. She couldn't even recall where  
8 it was done other than the United Kingdom.

9           THE COURT: That's the basis of sustaining  
10 it right now. Mr. Butner?

11          MR. BUTNER: Your Honor, I didn't mean to  
12 speak over you. I'm trying to communicate with Mr.  
13 Paupore.

14          THE COURT: The reporter has a hard enough  
15 job as we know. Turn to 703. She hasn't expressed an  
16 opinion in this specialized area. With regard to the  
17 study itself, she didn't even know where it came from,  
18 let alone be able to testify that is the type of article  
19 she would rely on in her field of expertise. I'm  
20 sustaining the objection. If there really are, if there  
21 really is foundation for her in this area, Mr. Paupore  
22 would be entitled to explore that and I'll go from  
23 there. Thank you. We're in recess.

24          (Whereupon, a recess is had from 10:42 a.m. to 10:59  
25 a.m.)

1 THE COURT: Let the record show the presence  
2 of the defendant, the attorneys, and the jury, and Ms.  
3 Brown has returned to the witness stand. Mr. Paupore?

4 MR. PAUPORE: Thank you, Your Honor.

5 Q. (Continued by MR. PAUPORE:) Alexis, I want to  
6 take you back to your testimony yesterday, including  
7 your earlier training in serology.

8 A. All right.

9 Q. After you graduated you went and worked for the  
10 Louisiana Police Department?

11 A. New Orleans Police Department.

12 Q. New Orleans Police Department. What did you do  
13 for New Orleans Police Department?

14 A. Mostly I was in training when I was there. That  
15 was the majority of the time. Couple months after I got  
16 out of training I began working on some blood stain  
17 cases.

18 Q. What kind of training did you receive?

19 A. We practiced with lots of different practice  
20 samples and mock cases, essentially performing the tests  
21 over and over again on various sample types.

22 Q. What kind of testing?

23 A. DNA testing.

24 Q. What about the, did you do any serology?

25 A. Not at New Orleans Police Department. They had

1 two separate testings, the DNA testing unit and serology  
2 unit.

3 Q. What did you work next?

4 A. ReliaGene Technologies.

5 Q. Tell us what you did at ReliaGene Technologies.

6 A. At ReliaGene I was given, again, several  
7 different testing samples to test for blood and semen.

8 Q. How long did you work there?

9 A. I worked there for approximately three years.

10 Q. So did you do serology exclusively at ReliaGene?

11 A. No.

12 Q. How long were you in the serology area?

13 A. They didn't have separate areas. The way it  
14 would work is you might work in serology for a week or  
15 two or you might do serology and then take the cases  
16 forward to DNA testing. They sort of switched back and  
17 forth on how they processed cases while I worked there.

18 Q. They moved you as needed?

19 A. As needed, yes.

20 Q. In serology, what to do you in serology when you  
21 are doing serology?

22 A. Serology is testing for body fluid. During that  
23 step we're responsible for collecting, it is the DNA for  
24 DNA tests. Sometimes that involves simply taking a swab  
25 and cutting it, it has been swabbed, a swab from the

1 agency has produced it or we are sent the whole entire  
2 item and we swab the item ourselves to get DNA.

3 Q. The item can be a piece of clothing or something  
4 along that line?

5 A. Sure.

6 Q. Even a weapon?

7 A. Sure. Absolutely. Guns. Knives. I've gotten  
8 those before.

9 Q. So the serology is first to identify if you have  
10 potential sources of DNA?

11 A. Yes.

12 Q. Then if you do have, you do believe it could be  
13 DNA on an item, you collect that?

14 A. That's correct.

15 Q. And the collection is by swabbing?

16 A. Yes. Ordinarily.

17 Q. And then it runs through the tests that you  
18 determined before?

19 A. That's correct.

20 Q. Now, if you got, for example, an object like a  
21 weapon or a knife or a gun, how do you get the DNA off  
22 of that?

23 A. We have to postulate where the, first of all, we  
24 need to know the case scenario and what's occurred, what  
25 we're looking for. For example, on a gun are we looking

1 who fired the gun or are we looking for blue vac, where  
2 we may have the victim's gun, inside the barrel of the  
3 gun, and what is actually being sought after. We read  
4 the case scenario to figure that out. We have to  
5 postulate that. Do they want to know who handled the  
6 gun, where would the gun be handled by someone who fired  
7 it, where should we swab, where would the cells be to  
8 get that information.

9 Q. Why would you want to know who handled it?

10 A. Again, depends on the case synopsis. I was  
11 coming up with an example.

12 Q. If you are looking for information about someone  
13 who handled the weapon, say like a gun, what would you  
14 do to look for that person's DNA on someone who might  
15 have handled that weapon?

16 A. Well, we could swab the grip of the gun, we could  
17 swab the trigger of the gun, we could swab the magazine  
18 that holds the bullets, we could swab the bullets  
19 themselves if there are bullets present.

20 Q. You talked earlier about the shedding of cells?

21 A. Yes.

22 Q. And shedding can occur from a person's hand?

23 A. Yes.

24 Q. And a person holding the gun could hold DNA cells  
25 somewhere on that gun?

1 A. That's the thinking, yes.

2 Q. That's the thinking. Is there a term for that?

3 A. A term for the shedding of cells?

4 Q. No. The handling, no. How does the DNA get from  
5 the person's hand to the gun?

6 A. That would be transfer of skin cells.

7 Q. Is that something that you deal with all the  
8 time.

9 A. Yes. We do have to postulate where the cells  
10 would be in order to properly collect the DNA.

11 Q. That is why you look at the handle?

12 A. Correct.

13 Q. That is why you look at the trigger?

14 A. Correct.

15 Q. Anyplace where someone might grip a weapon?

16 A. Anywhere they might touch it.

17 Q. Anywhere where they might touch it. And have you  
18 been able to isolate, extract and isolate DNA from  
19 someone who has handled an object like a weapon?

20 A. Yes.

21 Q. And have you been able to develop profiles from  
22 that?

23 A. Yes.

24 Q. And so, the handling and touching and  
25 transferring of DNA is something that you do all the



1 time; is it not?

2 A. Yes, it is.

3 Q. And do you keep up and read articles in your  
4 field that discuss what we're talking about?

5 A. We do because it's important for us to know the  
6 best collection techniques as well as the best areas to  
7 swab particular types of items that we see like guns and  
8 knives.

9 Q. And the swabbing of an item is actually the  
10 collection in the hopes of finding DNA?

11 A. Yes.

12 Q. So we're talking about collecting DNA, you're  
13 collecting it off some object that has been submitted or  
14 some fluid that has been submitted by an agency?

15 A. Yes.

16 Q. And do you have any knowledge on how DNA may  
17 transfer from one person to another?

18 A. The shedding of skin cells as far as touch DNA  
19 goes is the most common.

20 Q. And how common is it?

21 A. Well, like I said, I did learn in school about  
22 the Locard's Exchange Principle. That's when two people  
23 come into contact with each other and there will be a  
24 transfer of some evidence, something, not necessarily  
25 skin cells, but something. But as far as how common the

1 transfer is, I tried to read articles and studies to try  
2 to answer that question all the time. That's a question  
3 we get asked quite a bit and it's not easy to answer  
4 because there are so many factors that can be different,  
5 people's interactions, the only thing we can do in our  
6 field is to read studies and do studies and keep abreast  
7 of what studies are out there.

8 Q. And that's something that you try to keep up on?

9 A. Yes.

10 Q. You say you get asked all the time about what?

11 A. About how likely it is that we're going to find  
12 DNA on an item that someone has touched if someone  
13 touches the door handle, how likely is it that you will  
14 get a DNA profile.

15 Q. It depends likely on what we talked about  
16 yesterday, the type of object has something do with it?

17 A. Right.

18 Q. And other factors would be when that person last  
19 washed his or her hands?

20 A. There's lots of factors.

21 Q. But that is something that you deal with all the  
22 time?

23 A. Again, it's a question that gets asked us quite a  
24 bit and so I do try to read the studies that have been  
25 done and see if I can answer them. Oftentimes I say I

1 can't answer that, there's no way to tell for sure.

2 Q. I want to jump back to my grocery cart example we  
3 talked about. Would it in that scenario that I gave  
4 you, would it be possible for the mother's or one of her  
5 kids DNA to be found on my hands?

6 A. It's possible.

7 Q. And how could that happen?

8 A. Again, if the cells are transferred onto the  
9 grocery cart handle and you push the grocery cart  
10 handle, it is possible you pick them up on your hand.

11 Q. Is that something that you have looked at or  
12 examined before?

13 A. I can't think of any particular cases right off  
14 the bat. I can't recall any.

15 Q. Okay. We did talk earlier about a study that you  
16 had referred to in the United Kingdom?

17 A. Yes.

18 Q. When did you become aware of that study?

19 A. I became aware of that study, I had asked my  
20 laboratory director to try to find any studies on  
21 fingernails that he could find in the Journal of  
22 Forensic Science, which is a popular journal in our  
23 field, and he wasn't able to find much. When I came  
24 here I learned that you all had collected some articles  
25 and I asked if I could read them to see if there were

1 any that would be probative for that, would give me any  
2 information for this case, in particular.

3 Q. And did you recognize the source of that article?

4 A. Yes, I did. I'm very familiar with that  
5 publication.

6 Q. Very familiar with the publication. You weren't  
7 familiar when Mr. Hammond asked you what part of England  
8 that the study was conducted?

9 A. No. I didn't recall that from reading the  
10 article.

11 Q. And how was that study helpful to you with this  
12 case?

13 MR. HAMMOND: Your Honor, objection. If the  
14 witness is going to be asked anything about opinions she  
15 might have in this case, I object to lack of foundation,  
16 Melendez-Diaz, Rule 15 Disclosure.

17 THE COURT: Sustained.

18 Q. (Continued by MR. PAUPORE:) When you are talking  
19 about touch DNA, what do you mean by that exactly?

20 MR. HAMMOND: Your Honor, same objection.  
21 If the witness is being asked about or if counsel is  
22 intending to lead to any questions having to do with  
23 touch DNA, as it might apply to this case, Rule 15  
24 Disclosure.

25 THE COURT: I'm going to overrule as to that

1 specific question. You may answer that if you can.

2 THE WITNESS: When we use the term touch  
3 DNA, we're referring to, ordinarily it refers to DNA  
4 that we've obtained from an item that has been swabbed,  
5 but there is no indication of any body fluid being  
6 present; thereby, the presumption would be that any DNA  
7 we obtained from the item would be from someone touching  
8 it or skin cells contact with an individual's skin.

9 Q. (Continued by MR. PAUPORE:) An item that doesn't  
10 appear to the human eye to have any fluid or biological  
11 material, is that different than an item that would be,  
12 would have touch DNA?

13 A. I'm trying to think if there would be a scenario  
14 where that would be true. I can't think of any, if you  
15 get DNA off of an item it has to come from some source.  
16 As I said before, body fluid contains cells that  
17 contains the DNA. But body fluid is in a higher volume,  
18 much higher volume than what we call touch DNA items  
19 without a body fluid. My presumption would be it has to  
20 come from skin cells.

21 Q. Have to come from somebody else, somebody that  
22 has the DNA?

23 A. Right. It has to come from some source and it  
24 has to come from cells from a human body; so, therefore,  
25 there is no body fluid present, my assumption is it

1 would come from skin cells.

2 Q. And one step further, would it come from someone  
3 who touched that object?

4 A. Right. How else would the skin cells get there?

5 Q. Do you have any opinion at all how Carol Kennedy  
6 got the DNA on her hand?

7 MR. HAMMOND: Objection. Form of the  
8 question. If she can answer it yes or no I will  
9 withdraw the objection.

10 THE COURT: That is all it is at this time,  
11 a yes or no type of question.

12 THE WITNESS: No. I have no opinion.

13 Q. (Continued by MR. PAUPORE:) I ask the same  
14 question about, do you have any opinion about how the  
15 DNA might have gotten under her fingernail?

16 A. No, I don't.

17 Q. Do you have any opinion how the DNA would have,  
18 how the DNA got on the handset that we talked about,  
19 handset telephone?

20 MR. HAMMOND: Again, try a yes or no answer.  
21 Objection.

22 THE COURT: You may answer that as a yes or  
23 no, if you can.

24 THE WITNESS: Yes.

25 Q. (Continued by MR. PAUPORE:) You have an opinion?

1 A. Yes.

2 Q. What is that opinion?

3 MR. HAMMOND: Your Honor, objection. Rule  
4 15 Disclosure. May I ask an additional question on the  
5 voir dire?

6 THE COURT: You may voir dire.

7 VOIR DIRE EXAMINATION

8 BY MR. HAMMOND:

9 Q. Ms. Brown, you and I spent two days together;  
10 right?

11 A. I remember.

12 Q. I thought you might. On the second day I asked  
13 you a series of questions about opinions that you might  
14 or might not have in this case. Do you recall that?

15 A. Not specifically, no.

16 Q. Do you recall specifically that I asked you  
17 whether you had any opinions about touch DNA as it might  
18 apply to this case?

19 A. No. I don't recall.

20 Q. Do you have any recollection of saying that you  
21 had no such opinions?

22 A. No, I don't. I don't recall the conversation at  
23 all.

24 MR. HAMMOND: This is page 44 of the second  
25 day and we'll talk later about the -- I will be happy to

1 have Mr. Paupore read along with me. It might help him?

2 THE COURT: I'm asking counsel to examine  
3 that transcript before there's any further questions  
4 from counsel.

5 MR. HAMMOND: This is the transcript of the  
6 27th of April.

7 MR. PAUPORE: Your Honor, I will withdraw  
8 that question.

9 THE COURT: It's withdrawn.

10 Q. (Continued by MR. PAUPORE:) Based upon your  
11 answers given in that interview, Alexis, could Carol  
12 Kennedy have gotten DNA on her hand from pushing a  
13 grocery cart?

14 MR. HAMMOND: Objection. Your Honor, same  
15 objection. This witness has offered no opinions with  
16 respect to anything having to do with touch DNA in this  
17 case.

18 THE COURT: It's absolutely a hypothetical  
19 relating in the most general sense. Mr. Hammond?

20 MR. HAMMOND: It may be a very general  
21 question, but if she's offering any opinion on this  
22 topic it is not an opinion that she has expressed  
23 before. She was asked specifically about whether she  
24 had any such opinions and she said she did not.

25 THE COURT: Mr. Paupore?



1 MR. PAUPORE: She wasn't asked this question  
2 to my recollection, she already answered the question on  
3 my hypothetical.

4 THE COURT: So sustained. Objection is  
5 sustained.

6 MR. PAUPORE: And sustained on?

7 THE COURT: It's sustained.

8 MR. PAUPORE: I have no further questions of  
9 Ms. Brown. Thank you, Your Honor.

10 THE COURT: Thank you. Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. HAMMOND:

13 Q. Ms. Brown, give me just a moment to get my  
14 materials together. Good morning again.

15 A. Good morning.

16 Q. Ms. Brown, I ask you --

17 MR. PAUPORE: Mr. Hammond, if you would  
18 excuse me for a moment.

19 MR. HAMMOND: Want me to move?

20 MR. PAUPORE: Yes.

21 MR. HAMMOND: Forgive me.

22 Q. (Continued by MR. HAMMOND:) As I said in our  
23 little exchange a few minutes ago, you and I have met  
24 before?

25 A. Yes.

1 Q. We've met in your home, Salt Lake City?

2 A. Yes.

3 Q. At your laboratory?

4 A. Yes.

5 Q. It was about four months ago, little more, couple  
6 days more?

7 A. It was in April.

8 Q. It was April 26th and 27th?

9 A. That sounds right.

10 Q. We came to your office, my colleague Ann Chapman  
11 and I came up for this interview with you and other  
12 people; correct?

13 A. Yes.

14 Q. And you were interviewed in a conference room  
15 that your company provided to us?

16 A. Yes.

17 Q. The State of Arizona had representatives present  
18 as well?

19 A. Yes.

20 Q. One of those was Mr. Paupore?

21 A. Uh-huh. Yes.

22 Q. The other one was then Lieutenant Rhodes?

23 A. Yes.

24 Q. As it turned out we interviewed you twice?

25 A. Yes.

1 Q. We interviewed you on the first day and then we  
2 came back because of things that occurred and we  
3 interviewed some more the second day?

4 A. Yes.

5 Q. In the meantime, we interviewed several other of  
6 your colleagues who worked there?

7 A. Yes.

8 Q. And those interviews were recorded?

9 A. Yes.

10 Q. Both sides had digital tape recorders as is the  
11 common practice in these interviews?

12 A. Yes.

13 Q. And at the beginning of the interview we talked a  
14 little bit about the interview process, do you remember  
15 those conversations?

16 A. Yes. Uh-huh. Yes.

17 Q. One of the things we talked about was the fact  
18 that in an interview you really are not under oath. Do  
19 you remember me pointing that out to you?

20 A. Yes. I remember.

21 Q. And do you remember saying to me that you  
22 understood that you were not under oath but you intended  
23 to answer all of my questions and any questions that the  
24 state might ask just as if you were under oath?

25 A. That's -- I remember that, yes.

1 Q. And I then suggested that there might come a day  
2 when you would be in a courtroom and that we would  
3 expect the answers you give at this time to be the same  
4 as the answers you gave then?

5 A. Yes. I recall that.

6 Q. And you said you were comfortable with that and  
7 you understood it and wanted to proceed that way?

8 A. Yes.

9 Q. We were there to talk to you because you had  
10 written two reports; right? You don't know why I was  
11 there. That's a silly question. You had written two  
12 reports?

13 A. Yes, I had, at that time.

14 Q. Okay. And you've talked about those reports a  
15 fair amount yesterday and today, and we're going to talk  
16 about, come back and talk about them some more.

17 A. Okay.

18 Q. Let's spend a couple more minutes about what you  
19 said about your personal background so that we have that  
20 clearly in mind. You've actually been in the DNA  
21 testing field for more or less six years?

22 A. Yes.

23 Q. You have your degree in cell and molecular  
24 biology from Tulane?

25 A. Yes.

1 Q. You've done no graduate work, you have no  
2 graduate degrees?

3 A. That's correct.

4 Q. And you talked about a couple other jobs you had  
5 with New Orleans Police Department and with another  
6 company in the South Central United States?

7 A. Yes.

8 Q. And then you came out to Salt Lake City and took  
9 a job with Sorenson?

10 A. Yes.

11 Q. And you've been with Sorenson now for about two  
12 years?

13 A. That's correct.

14 Q. This is actually your first time testifying in a  
15 court of law since you came to Sorenson?

16 A. Since I came to Sorenson, yes.

17 Q. And this is also your first Arizona involvement?

18 A. Yes, it is.

19 Q. Which is why you made that nice comment about  
20 Prescott yesterday?

21 A. Well, I've been to historic downtowns before and  
22 they have never looked as nice as this one. It did  
23 impress me.

24 Q. Good for you. It is a nice place. You also said  
25 that as part of your ongoing continuing education you

1 said you are required to do eight hours of continuing  
2 education a year?

3 A. Yes.

4 Q. That's essentially one day?

5 A. Essentially, yes.

6 Q. So you, in order to maintain the minimum levels  
7 in your field, you have to attend one day of conferences  
8 a year?

9 A. That's correct.

10 Q. And I thought you said that you also are required  
11 by your profession to read one paper a year?

12 A. I don't remember the exact wording of the  
13 requirement, but I do believe it just states that you  
14 have to read scientific literature annually. They don't  
15 specify how many documents you have to read, just that  
16 it has to be related to DNA testing in particular.

17 Q. So, if you said yesterday that the requirements  
18 in your field call for you to read one paper a year,  
19 that wouldn't be what you intended to say?

20 A. Well, it is correct because ordinarily when they  
21 audit you to see if you're complying with this they want  
22 to see proof that each DNA analyst has read at least one  
23 document a year.

24 Q. So, in order to maintain your certification as a  
25 DNA analyst, specialist, all you have to do is to read

1 one paper a year?

2 A. Well, the audit is not for the DNA analyst, the  
3 audit is for the laboratory. In order for the  
4 laboratory to be in compliance, they have to insure that  
5 their DNA analysts have read scientific literature,  
6 which I have witnessed on an audit that they want to see  
7 that each analyst has read at least one paper in the  
8 year.

9 Q. Okay. And you said that the laboratory is the  
10 entity that receives this certification?

11 A. That's correct.

12 Q. So let's talk a little bit about Sorenson.  
13 Sorenson is a private company?

14 A. Yes.

15 Q. It is a for-profit company?

16 A. Yes.

17 Q. That is, it is in business, like many other  
18 businesses in this community and in the United States,  
19 it's in the business of making money?

20 A. That's correct.

21 Q. It's not what we might think of as a nonprofit or  
22 a not-for-profit?

23 A. That's correct.

24 Q. And essentially what Sorenson does is it  
25 provides, it offers its services to people who you call

1 your clients?

2 A. Yes.

3 Q. Most of those people who you call your clients  
4 are law enforcement agencies?

5 A. The majority of them are, yes.

6 Q. And the way you approach, and in this question  
7 I'm saying you as the company, the way you approach  
8 these relationships with law enforcement and with others  
9 is the way any for profit business might approach its  
10 relationships with customers and clients?

11 A. Well, what's your definition of that?

12 Q. Let me be more specific. The way Sorenson likes  
13 to see itself is as a partner with whomever asks for the  
14 company's services?

15 A. Generally speaking, yes.

16 Q. And the idea of being a partner or a collaborator  
17 is really an important part of the work that Sorenson  
18 does when it develops relationships with outside  
19 agencies, particularly law enforcement agencies?

20 A. Yes. We do see ourselves as trying to be a  
21 collaborator with whomever is asking for our services,  
22 whether it be a law enforcement agency or a defense  
23 attorney or a private individual.

24 Q. You also do, the company does a fair amount of  
25 paternity testing?



1       A. Our company, Sorenson Forensics, in particular, a  
2 small portion of our business comes from criminal  
3 paternity testing, but the sister company ReliaGene does  
4 the paternity company.

5       Q. Which are owned companies, owned by the parent  
6 company?

7       A. Yes.

8       Q. I think you told me that you don't know the, a  
9 lot about who actually owns the parent, but you know  
10 that there are sister companies that engage in the law  
11 enforcement work that we've talked about here and that  
12 also hold themselves out to do DNA testing, generally,  
13 and another company that does the paternity testing?

14       A. I believe that our company is the only one that  
15 deals with the law enforcement, but I could be wrong  
16 about that.

17       Q. That is what I meant to say. Your company deals  
18 with the law enforcement side, your sister company owned  
19 by the same parent does the paternity testing?

20       A. That's correct. We do some paternity testing,  
21 but it is very limited.

22       Q. If law enforcement comes to you, and this is an  
23 issue of paternity in your criminal case, your side of  
24 the company might deal with that?

25       A. It is not always law enforcement. We have a

1 client in Japan that sends us things regularly, I  
2 believe they are a private company as well, and  
3 sometimes we do paternity cases for them or test  
4 whatever items they might send us for DNA testing.

5 Q. This case, the case involving our client, Mr.  
6 DeMocker here, is the first occasion upon which your  
7 company Sorenson entered into any kind of contractual  
8 relationship with the Yavapai County Sheriff's Office;  
9 is that correct?

10 A. I don't really have that information. I'm not  
11 sure. I don't know.

12 Q. Do you think that there was some prior  
13 relationship? Do you have any reason to think there  
14 was?

15 A. I don't know if we've processed any cases for  
16 them before. I would have to look at our records that  
17 is back at the office. I'm not sure.

18 Q. But you certainly, personally, didn't have any  
19 relationship at all?

20 A. This was the first case I processed for them,  
21 yes.

22 Q. Do you know any of them in the company? You  
23 mentioned a couple other people. Anyone ever suggest to  
24 you that prior to this case the Yavapai County Sheriff's  
25 Office had some business relationship?

1 MR. PAUPORE: Objection. Calls for hearsay.

2 THE COURT: Sustained.

3 Q. (Continued by MR. HAMMOND:) Let's talk a little  
4 bit about your job. Has that job description that you  
5 told us about yesterday changed since Ms. Chapman and I  
6 visited with you last April?

7 A. No, it's not.

8 Q. And at that time you thought that your work was  
9 about 50 percent supervision and 50 percent analysis?

10 A. Approximately.

11 Q. Still roughly; correct?

12 A. Yes. That's correct.

13 Q. Did I hear you say, though, that you also are  
14 the, and I think you said the quality assurance person  
15 at the lab?

16 A. Yes.

17 Q. Were you the quality assurance person when Ms.  
18 Chapman and I came to visit with you in April?

19 A. Yes, I was.

20 Q. So when quality questions come up you're the  
21 person in the company who has the primary  
22 responsibility?

23 A. Well, the responsibility for quality, according  
24 to the FBI, always falls to the DNA technical leader,  
25 which at our company is Dan Hellwig. But as far as the

1 day-to-day operations of the quality program, I do  
2 handle those.

3 Q. We're going to talk a little bit today about this  
4 episode that occurred that resulted in us spending two  
5 days with you and you changing your report. That  
6 episode resulted in what you said this morning was a  
7 nonconforming review, that is a review to determine what  
8 happened, I think you called it a root cause analysis?

9 A. A corrective action, yes.

10 Q. Were you in charge of that?

11 A. No, I wasn't. Obviously, it wouldn't be  
12 appropriate, since it was my error, for me to do my own  
13 corrective error, so Dan Hellwig did --

14 Q. Are you telling me -- excuse me if I interrupted  
15 you. I don't know mean to do that.

16 A. I was finished.

17 Q. Are you telling me that if it hadn't been for the  
18 fact that the error that we're going to talk about was  
19 yours, you would have been the person conducting the  
20 nonconforming action review?

21 A. Dan and I share that duty. It sort of depends.  
22 When an individual comes into the office and says, "Hey,  
23 I noticed this in my case, what do I do about it," Dan  
24 and I will talk about it and determine if a corrective  
25 action is needed. If one is needed, it depends on who

1 has time to do it and who was in the office when the  
2 person came, because we share an office, I am in the  
3 office and they tell me about it. I initiate the  
4 corrective action. If Dan is in the office and I'm not  
5 there, he may initiate the corrective action.

6 Q. Who ultimately signs off on behalf of the company  
7 for any corrective action that occurs as result of a  
8 mistake?

9 A. That is Dan Hellwig. He signs off on all of  
10 them.

11 Q. Why don't you sign off on it?

12 A. I don't know. It is the DNA technical leader  
13 that has to be on the documents.

14 Q. So even if someone else had made the error, the  
15 ultimate nonconforming review responsibility, would  
16 still have been Dan Hellwig?

17 A. Yes. Absolutely.

18 Q. Let's talk a little bit about the DNA work you  
19 did in this case.

20 A. Okay.

21 Q. You probably know or have been told along the way  
22 that you really are the first DNA related witness who  
23 has been called in this trial?

24 A. I actually wasn't aware of who testified prior to  
25 me.

1 Q. Well, I will tell you that you are the first  
2 witness in this case who has talked about DNA.

3 A. Okay.

4 Q. So I want to take advantage a little bit of your  
5 experience to talk about a couple of the most basic  
6 things.

7 A. All right.

8 Q. So let's talk first about DNA. Okay. Let me ask  
9 you if you agree with this statement: If you want to  
10 identify a person there may be no better tool?

11 A. Are you done? I'm sorry. No better tool than  
12 DNA?

13 Q. No better tool than DNA.

14 A. I would agree with that. They may be no better  
15 tool.

16 Q. There may be no better tool. Actually, one of  
17 the best fields of examples of that fact that for  
18 identification purposes there may be nothing better in  
19 the field of missing persons?

20 A. DNA is often used in missing persons.

21 Q. And when you are looking for a missing person,  
22 obviously, if, for instance, a body is found somewhere,  
23 one of the important things that society has to do and  
24 law enforcement has to do is to see if they can identify  
25 who that person is?

1 A. True.

2 Q. And before we had DNA, typically, the hope was  
3 that there would be some other unique identifying  
4 attribute like the fingerprints; right?

5 A. Sure.

6 Q. Okay. This is not a trick question, you don't  
7 need to --

8 A. I'm just trying to make sure I answer it  
9 correctly.

10 Q. But in the years since DNA, when there had been  
11 missing persons, if there is DNA available, that's what  
12 we would most want to do, is to get the DNA from the  
13 body of the missing person, for instance, and compare it  
14 to any DNA if we happen to have some?

15 A. I haven't worked a lot of missing person cases  
16 myself. I don't know exactly how those are conducted.  
17 I know I personally have not worked on any cases that  
18 I'm aware of where they've tried to identify a body  
19 based on, based on DNA. Ordinarily, we're submitted a  
20 reference sample from the body that says this is the DNA  
21 from the body.

22 Q. In your reading as DNA specialist, have you read  
23 much about 9/11?

24 A. No. Not much.

25 Q. Are you aware that maybe the largest single DNA

1 project in world history was the identification of  
2 people after 9/11 at the World Trade Center?

3 A. When you say missing persons, I'm thinking you  
4 mean, perhaps, a dead body is found, not pieces all over  
5 the place and they're trying to put that together. I  
6 have worked on a Lebanon airplane crash where you are  
7 trying to bury somebody's family member, you want to put  
8 all those pieces in the same box. If for that purpose,  
9 I understand.

10 Q. Let's talk about that purpose. That is really a  
11 class of missing persons and there were a lot of them at  
12 the World Trade Center, as you know.

13 A. Right.

14 Q. Whose identity was not known?

15 A. Correct.

16 Q. And I assume you know that the New York City  
17 Crime Lab put together a huge project based entirely  
18 upon DNA?

19 A. Right.

20 Q. In an effort to help families identify loved ones  
21 who might have passed away?

22 A. Right.

23 Q. And really for many people that experience of  
24 9/11 and the first couple years afterwards gave huge  
25 interest in the DNA work. Do you agree with that?



1       A. I think there was interest before then, but it  
2 may have headed to it, yes.

3       Q. There was interest and actually the DNA field  
4 goes back 20 years?

5       A. Yes, it does.

6       Q. But I think you would agree from your reading  
7 that the emphasis upon DNA as a tool has really  
8 continued to increase at a very dramatic rate,  
9 particularly in the last ten years?

10      A. I would agree with that statement.

11      Q. And things about the 9/11 and the Libyan bombing  
12 and many others have contributed to that?

13      A. Absolutely they have.

14      Q. And, indeed, along the way, what has happened is  
15 that DNA has become what you might call the gold  
16 standard?

17      A. It's -- yes. I would have to agree with that and  
18 forensics.

19      Q. And the field of forensic science people often  
20 say DNA is the gold standard?

21      A. I haven't heard that exact phrase before, but I  
22 do think that we stand out in the forensic community  
23 because of all of the auditing that we require, all the  
24 standards that we have. There is a lot of forensic  
25 fields that do not have all those requirements and we

1 do.

2 Q. And often the rigor, the attention brought to DNA  
3 work has been used as an example of how we can improve  
4 in other forensics science?

5 A. Yes, it has.

6 Q. You said one of the reasons why DNA has become as  
7 respected a field as it is is because of the extensive  
8 regulations?

9 A. Yes. That's true.

10 Q. You said several times that your laboratory is  
11 regulated by the FBI?

12 A. I don't think I used the term regulated, but we  
13 do have FBI set standards for all DNA testing  
14 laboratories that we have to follow. They are not the  
15 actual body that enforces those standards.

16 Q. There is not really direct FBI enforcement or  
17 compliance with standards set in this field?

18 A. Not that I'm aware of.

19 Q. And the standards themselves, and I don't want to  
20 quarrel with you, but the standards themselves are not  
21 actually made by the FBI?

22 A. No, they're not.

23 Q. The standards actually come from something called  
24 a scientific working group?

25 A. Well, the base of the standards come from the

1 scientific working group. It was the DNA advisory board  
2 that worked with the FBI that created the standards.

3 Q. The scientific advisory board came up with some  
4 ideas and that board that had members of the FBI on it?

5 A. Yes.

6 Q. And others?

7 A. Yes.

8 Q. And then they got together and they decided to  
9 create a scientific working group?

10 A. That's correct.

11 Q. The working group goes under a horrible acronym  
12 called SWGDAM?

13 A. SWGDAM, scientific working group for DNA analysis  
14 working methods.

15 Q. It was that working group, certainly with the  
16 contribution of the FBI, that established the standards  
17 that now have become hallmark of a good DNA lab?

18 A. Yes. That's true.

19 Q. Okay. Laboratories and a lot of the research  
20 that has been done around the country has benefitted  
21 from a very large infusion of public money; correct?

22 A. Yes. I believe the majority of it is public  
23 money.

24 Q. A lot of federal money involved in the  
25 development and advancement of DNA in this country?

1       A. As far as the development and the research, I'm  
2 not sure exactly where that funding comes from. I was  
3 thinking more along the lines of who ends up paying for  
4 a lot of the DNA testing.

5       Q. And, of course, the government pays for a lot of  
6 that, too, but the basic scientific work, the work that  
7 has led to the refinement of DNA, some of the things  
8 that you talked about yesterday and that we'll talk  
9 about today, really came about as a result of  
10 extraordinary infusions of federal money?

11       A. I'm not sure where the source comes from. I know  
12 the organizations, but I don't know who funds them.

13       Q. So you don't follow the federal government  
14 funding of DNA research?

15       A. No. That doesn't really peak my interest, no.

16       Q. Do you know if you ever want to take a sabbatical  
17 and work on a grant?

18       A. If I would ever want to do that?

19       Q. Yeah.

20       A. No. I don't believe so.

21       Q. Maybe that's why it is not of interest to you.

22       A. Perhaps. I don't have much interest in research.

23       Q. I'm sorry about that. One of the things you said  
24 is that one of the reasons that we can feel confident  
25 about DNA work is that there are protocols that govern

1 all aspects of the work that you and your colleagues do?

2 A. Yes.

3 Q. You've called those protocols, that they're also  
4 called SOPs?

5 A. Yes.

6 Q. Stand order, I think you called them standard  
7 operating protocols?

8 A. Standard operating procedures or protocols.

9 Q. Standard operating procedures is the more common  
10 phrase?

11 A. Yes.

12 Q. Fair to say that Sorenson and you individually  
13 try to take those protocols seriously?

14 A. Absolutely.

15 Q. And one of the reasons why you want to take those  
16 protocols seriously is that you are going, your lab is  
17 going to be audited from time to time by outside  
18 organizations?

19 A. That's true.

20 Q. I think you may have said yesterday that the  
21 auditing was done by the American Society of Crime  
22 Laboratories?

23 A. American Society Of Crime Laboratory Directors,  
24 Laboratory Accreditation Board.

25 Q. That's really the correct statement, is that

1     there, it is not ASCLD itself that does the audits?

2         A.   I said ASCLD Labs.

3         Q.   There is a separate entity called ASCLD Labs?

4         A.   Yes.

5         Q.   And they come around and they do audits?

6         A.   Yes.

7         Q.   And sometimes agencies pass those audits and  
8     sometimes they don't?

9         A.   That's correct.

10        Q.   And there are now stories in the press very  
11     frequently about the failures of some laboratories to  
12     meet ASCLD's standards?

13        A.   I don't know if it would be very frequently, but  
14     it does unfortunately happened.

15        Q.   It happens in places where you've been, it has  
16     happened in Texas?

17        A.   Yes.

18        Q.   Hugely happened in Texas?

19        A.   Yes.   The Houston Police Department was a very  
20     large story a few years ago.

21        Q.   And, unfortunately, there is now a very large  
22     story involving ASCLD and its failure to properly  
23     evaluate the state laboratory in the State of North  
24     Carolina?

25        A.   I'm not actually aware of that particular

1 situation.

2 Q. But are you aware that it has been front page  
3 news around the United States for the last two weeks?

4 A. No, I haven't. I've been very focused on  
5 preparing for this trial so I haven't picked up a paper.

6 Q. Let's talk about the steps that you visited about  
7 a little bit yesterday with Mr. Paupore on the DNA  
8 process, the work that you all do. Okay? Fair to say  
9 that all DNA work that eventually gets to an analyst has  
10 to begin with collection?

11 A. Yes.

12 Q. Again, to make clear, you've had absolutely no  
13 involvement with the DNA collection in this case?

14 A. That's correct.

15 Q. You had never been to the crime scene?

16 A. That's correct.

17 Q. You never saw the victim, you weren't around at  
18 the time of the autopsy?

19 A. No. I have no knowledge of any of that.

20 Q. You certainly, until you came into the court, you  
21 never saw or met Mr. DeMocker?

22 A. No, I hadn't.

23 Q. And, indeed, until I interviewed you in Salt Lake  
24 City, you had been involved in the case for some number  
25 of months and were not even aware that it was a case at

1    which, at that time the State of Arizona was seeking the  
2    death penalty?

3       A.   No.   I hadn't had any information about the court  
4    case at all.

5       Q.   You were surprised when I told you that this was  
6    a death penalty case?

7       A.   I wouldn't say I was surprised, but I didn't know  
8    the information.

9       Q.   The items that were collected that you had no  
10   involvement in were eventually, at least some of them,  
11   found their way to your laboratory?

12      A.   Yes.

13      Q.   And I think we talked during the course of your  
14   direct examination about what turned out to be maybe  
15   eight areas, or eight items, and let's be sure that we  
16   have them all here before lunch and then we'll talk  
17   about them in more detail after lunch.  The first item  
18   that you have talked about is a hair?

19      A.   I talked about an apparent fiber.

20      Q.   It was something identified to your laboratory as  
21   a hair?

22      A.   Yes.

23      Q.   And do you recall in the materials you received  
24   being informed that that was a hair that had been  
25   collected at the time of the autopsy in this case?



1 A. Yes. I recall that being in the material.

2 Q. And that the hair itself was found as part of the  
3 trace evidence examination at the beginning of the  
4 autopsy by Dr. Keen?

5 A. I don't know if that information was provided.

6 Q. Do you remember that the hair was thought to have  
7 been located on the back of the running shorts of the  
8 victim?

9 A. I don't recall if that was included in the  
10 information or not.

11 Q. Do you recall that when this item was collected  
12 it was given an evidence item number?

13 A. I know it was identified with such a number, yes.

14 Q. Does the number 406 conform to your memory?

15 A. I would have to look at the case notes.

16 Q. We'll come back and look at it. The second item,  
17 and this may not be exactly the order in which you  
18 mentioned them, but in your reports you talked about a  
19 lithium battery?

20 A. Yes.

21 Q. From a cell phone belonging to the defendant?

22 A. My understanding was that that belonged to a cell  
23 phone found in the woods.

24 Q. I'm sorry?

25 A. My understanding was that was a cell phone found

1 in the woods.

2 Q. A cell phone found in the woods?

3 A. I would have to look at my notes to confirm that  
4 information, but just in my memory that is what I  
5 recall. I could be wrong.

6 Q. Do you recall being told at some point that there  
7 was a cell phone collected from Mr. DeMocker's home?

8 A. No. I don't recall the information.

9 Q. The evidence item is in your documents, but it's  
10 evidence item 408. Does that ring a bell with you?

11 A. Again, I would have to look at the case notes. I  
12 don't remember any of the specific item numbers.

13 Q. Do you know that wherever you might have thought  
14 the item was found that it was thought to be Mr.  
15 DeMocker's --

16 A. Yes.

17 Q. -- cell phone that had a lithium battery --

18 A. Yes.

19 Q. -- inside of it? You know, I take it with  
20 respect to that item you were being asked to look for  
21 the victim's DNA?

22 A. Yes.

23 Q. You were being asked by the sheriff's office to  
24 determine whether the victim's blood or the victim's DNA  
25 had somehow gotten onto that battery?

1       A. I would have to look at my notes before I would  
2 speak as to what they specifically asked us to do, but  
3 it is to my understanding that that is what we were  
4 looking for.

5       Q. And you concluded in that case that there was no  
6 DNA from the victim?

7       A. I would have to look at my report again, but I  
8 don't recall.

9       Q. Why don't you take a look at that over the lunch  
10 hour and we may be able to save a few minutes this  
11 afternoon.

12       A. Okay.

13       Q. The next item was the cell phone that was  
14 identified to you as the cell phone of the victim?

15       A. I don't recall that item.

16       Q. This is, I'm sorry, you don't recall the item?

17       A. Are you speaking of the handset telephone?

18       Q. Yes.

19       A. I'm sorry, I didn't think of that as a cell  
20 phone.

21       Q. And it may not be a cell phone. That is a fair  
22 point. It is evidence item 507?

23       A. Yes.

24       Q. And you know, I take it, that that cell phone was  
25 found in the bedroom where the victim's body was found?

1       A. I did believe it to be a telephone in the  
2 victim's residence or near the victim, yes.

3       Q. And so that was the third item and that's item  
4 507. We'll talk a little bit more about that. Okay?  
5 The next item was a door handle. Do you recall being  
6 asked to do some analysis with respect to a door handle?

7       A. Again, I would have to look at my report. I  
8 don't specifically recall that item.

9       Q. Maybe you can look at that over the lunch hour,  
10 too. It's item 805.

11      A. All right.

12      Q. In the materials --

13      A. Could I have my report here when we discuss these  
14 items?

15      Q. You certainly can.

16      A. That would help a lot.

17      Q. You certainly can. And the fifth item was a  
18 washer hose?

19      A. I do recall that item.

20      Q. And that washer hose you were told had come from  
21 Mr. DeMocker's home?

22      A. Yes.

23      Q. And you know that that washer hose was sent to  
24 Sorenson?

25      A. Yes.

1 Q. And you talked about it, you said this was the  
2 one that was cut into little pieces?

3 A. Yes.

4 Q. And that item, ultimately, your company decided  
5 not to test?

6 A. Yes.

7 Q. Okay. The sixth item is the one that you talked  
8 about a good deal, the fingernails from the left hand --

9 A. Yes.

10 Q. -- of the victim? And you had, your company had  
11 both the left-hand fingernails themselves and an  
12 extract?

13 A. Yes.

14 Q. And the extract had been provided to you by the  
15 DPS Northern Arizona --

16 A. Yes.

17 Q. -- crime lab? So that was the sixth item. The  
18 seventh item was a swab from the left hand --

19 A. Yes.

20 Q. -- of the victim? And that swab had come to you  
21 from DPS?

22 A. Yes.

23 Q. The last item that you looked at was the extract  
24 from the right fingernails?

25 A. I don't know if it was the extract or if it was

1 the actual fingernails themselves. I believe it was the  
2 fingernails themselves.

3 Q. Might have been buccal?

4 A. I would have to look at my notes.

5 Q. And those items were the eight items that you  
6 wound up writing a report about and coming in here and  
7 testifying about?

8 A. Yes.

9 Q. Okay. And so in order to do the work that you've  
10 told us about, somebody collected all of those items and  
11 they were processed and they've been through the, as I  
12 understand it, a varying extent of several different  
13 agencies?

14 A. I suppose that would be true, yes.

15 Q. They had to be collected by somebody, many of  
16 these items had already been analyzed?

17 A. That's true.

18 Q. There's really very little here that hadn't been  
19 previously analyzed and you understood that from the  
20 very onset?

21 A. Yes.

22 Q. Analyzed by the DPS crime lab --

23 A. That's my understanding, yes.

24 Q. -- in Flagstaff? So each of the items,  
25 ultimately, now with the exception of the drain hose,

1 all of those items went through what you call serology?

2 A. Yes.

3 Q. Tell us again in a few words what you mean when  
4 you say serology.

5 A. Serology for us is either the identification of a  
6 body fluid or it can be preparing the sample for DNA  
7 testing.

8 Q. And what you are really doing is preparing to  
9 test for the presence of DNA?

10 A. Yes.

11 Q. Could be that that a serologist might look at an  
12 item and find that there is no DNA on it?

13 A. We may not find anything suitable for DNA  
14 testing, that's true.

15 Q. You've told us that you've done serology work on  
16 other matters?

17 A. Yes.

18 Q. But you had no involvement in the serology work  
19 done in this case?

20 A. That's correct.

21 Q. Do you recall who the individuals were who  
22 actually did the serology on the items I just mentioned?

23 A. It was Stephanie Masters.

24 Q. Did she do all of them?

25 A. I believe, yes.

1 Q. What about Linda Silva?

2 A. She is an employee at our laboratory. I would  
3 have to look at my notes to see if she touched any of  
4 the items. I thought it had only been Stephanie  
5 Masters. But, again, without my notes, I'm just trying  
6 to recall. If you would like exact accurate answers I  
7 can bring out my case file.

8 Q. If may not matter who they were. Do you believe  
9 that all of these items were done by the same person?

10 A. I thought they had been, yes.

11 Q. You know that when the serology work, at least  
12 some of it was done in this case, in the report that  
13 you've talked about on direct examination, the defense  
14 had an expert present?

15 A. Yes.

16 Q. Her name is Nora Wooden?

17 A. Yes.

18 Q. She's actually here in the back of the courtroom  
19 today?

20 A. Yes.

21 Q. You know that she was, she was there by court  
22 order to observe the serology work that was being done?

23 A. Yes.

24 Q. Let's talk about the next phase after serology,  
25 it's what you call lab wet work?



1 A. Yes.

2 Q. Why do you call it lab wet work?

3 A. It is the work that is actually done on the  
4 bench. It involves the use of the chemicals and adding  
5 things to the tube, adding liquid around so in that way  
6 it is wet as opposed to the analysis which is done at  
7 your desk.

8 Q. And the words you used to capture some of the  
9 things that happened during lab wet work are words  
10 common in the DNA field, the first one being extraction?

11 A. Yes.

12 Q. There has to be a process of DNA extraction from  
13 whatever item has been identified in the serology work  
14 done on it?

15 A. Yes.

16 Q. You also talked about a word that you said was  
17 either quantification or quantization?

18 A. Depending on where you work, both terms are used.

19 Q. And that is part of the lab work done on all of  
20 the items here if they went beyond the serology stage?

21 A. Yes.

22 Q. Figuring out the quantity of available DNA for  
23 testings is an important part?

24 A. It is very important, yes.

25 Q. And then you talked about amplification?

1 A. Yes.

2 Q. And really amplification, although we could spend  
3 a couple days on it, is really one of the key things  
4 that has happened that has made DNA testing so valuable?

5 A. Yes.

6 Q. Now, we can take very small amounts of DNA and  
7 make them into something that can actually be analyzed?

8 A. Absolutely.

9 Q. And then the process itself is one that I guess  
10 we could all do a seminar on and spend a fair amount of  
11 time, and some of us might enjoy it and some of us might  
12 not, but in those few words an amplification,  
13 quantification and amplification -- excuse me,  
14 extraction, amplification extraction and quantification  
15 are really a large part of the learning process that  
16 people employed in your lab have to go through?

17 A. Yes, it is.

18 Q. And all of that, assuming that there are any  
19 observable results, leads to the stage that you were  
20 involved with?

21 A. Yes.

22 Q. You had no involvement in anything that we've  
23 done or talked about so far, but you did the work that  
24 you call the analysis?

25 A. Yes.

1 Q. And the analysis here is actually a phase that  
2 you can do, as I think you said, sitting at your desk?

3 A. Yes.

4 Q. You're actually looking at results that come out  
5 of a computer?

6 A. Yes.

7 Q. You are examining those results and hopefully  
8 taking those results and coming up with things that you  
9 could put into what's called a profile?

10 A. Yes.

11 Q. It might be in a table form?

12 A. Usually.

13 Q. And that profile, if we're talking about Y-STR  
14 testing, which is most of what we're talking about, is  
15 going to, as you say, look at 16 locations?

16 A. Yes.

17 Q. Along a strand of DNA?

18 A. That's correct.

19 Q. And it is going to try to help you pull out a  
20 number, if you're lucky, for each of those locations?

21 A. Yes.

22 Q. So that you can then take that profile, if you  
23 will, and use it for purposes of comparison?

24 A. That's correct.

25 Q. And what you were doing was developing those

1 profiles and some kind of a summary form?

2 A. Yes.

3 Q. So that they could then be the subject of  
4 comparison against known samples?

5 A. Yes.

6 Q. Or against other unknown samples?

7 A. Yes.

8 MR. HAMMOND: Your Honor, I think this would  
9 be a convenient time.

10 THE COURT: Thank you, Mr. Hammond. Ladies  
11 and gentlemen, we will take the noon recess at this  
12 time. Remember the admonition. Please be in the jury  
13 room by 1:20. You are excused at this time, as are you,  
14 Ms. Brown, as well.

15 (Whereupon, a recess is had from 12:01 p.m. to 1:30  
16 p.m., at which time a lunch recess is had.)

17 THE COURT: The record will show the  
18 presence of the defendant, all the attorneys, the jury  
19 is present and the witness is on the stand. Mr.  
20 Hammond, you may resume your cross-examination.

21 MR. HAMMOND: Thank you, Your Honor.

22 Q. (Continued by MR. HAMMOND:) Good afternoon Ms.  
23 Brown.

24 A. Good afternoon.

25 Q. Let's go through the different chronology that

1 you and Sorenson did in this case and we'll try to move  
2 forward with it as quickly as we can. Is it good to say  
3 and safe to say that all your involvement in this case  
4 is relatively recent?

5 A. Relatively, yes.

6 Q. 2010 has all been your involvement in this case?

7 A. Yes. All been in 2010.

8 Q. Right. I think you may have said that you knew  
9 that Lieutenant Rhodes had come to Salt Lake City in  
10 February?

11 A. Yes.

12 Q. February of this year, and that you knew that he  
13 brought items of evidence with him to the laboratory?

14 A. Yes.

15 Q. And he met with a couple of your colleagues?

16 A. Yes.

17 Q. Do you recall the individuals he met with?

18 A. I know he met with Dan Hellwig our technical  
19 leader, as well as Carma Smith our evidence custodian.

20 Q. She's also, she's the evidence custodian and she  
21 is also the intake person up there?

22 A. Yes.

23 Q. You, of course, were not there?

24 A. That's correct.

25 Q. But one of your company's practices is to have

1 the intake coordinator draw up a little memorandum  
2 summarizing the communications between, in this case,  
3 Captain Rhodes and your organization?

4 A. Our particular evidence custodian does serve that  
5 function occasionally, yes.

6 Q. And you know and refer to in your direct  
7 examination that a case note was done?

8 A. Yes.

9 Q. And the general idea that you and your colleagues  
10 obtain from the meeting that Captain Rhodes had was that  
11 the sheriff's office was interested in testing or  
12 retesting items that might then be compared with the  
13 victim, Steve DeMocker, or James Knapp?

14 A. Do you mind if I look at my notes just to refresh  
15 my memory?

16 Q. No. No. In fact, you can look at yours and if  
17 you don't have yours readily available, I have an extra  
18 copy.

19 A. I tagged it. I figured we would probably need  
20 it.

21 Q. Okay.

22 A. Yes. Those were the three people, according to  
23 my case note, those were the three people that were  
24 indicated during that initial meeting was, as you said,  
25 Virginia Kennedy, James Knapp, they refer to him as Jim

1 Knapp, but James Knapp, and Steve DeMocker.

2 Q. Okay. And you, in addition to knowing that your  
3 company was receiving these items of evidence for  
4 examination, you also received reference samples?

5 A. We did receive a reference sample of James Knapp.  
6 The other references came from, they were the profiles  
7 developed by the Arizona lab.

8 Q. Okay. So you had a reference sample for James  
9 Knapp; is that correct?

10 A. Yes.

11 Q. And you, as far as your analysis with the victim  
12 in this case, Carol Kennedy, Carol Virginia Kennedy, you  
13 had a profile that had been developed by the DPS lab?

14 A. Yes.

15 Q. You didn't get your own sample and then do your  
16 own tests on it?

17 A. That's correct.

18 Q. And the same was true with Steve DeMocker?

19 A. Yes. That's true.

20 Q. There were several items that were, that were  
21 brought to you that Sorenson decided ultimately not to  
22 test, not to test at all?

23 A. Yes.

24 Q. There were several, one of them was an item that  
25 the jury has heard about that we call the desk trim. Do

1 you remember that there was desk trim from a desk in the  
2 bedroom that was sent to Sorenson?

3 A. I don't recall, but I could look in my notes and  
4 tell you for sure.

5 Q. Okay. Would you do that?

6 A. Sure.

7 Q. It might help if I pointed it out to you and  
8 maybe you've already found the page.

9 A. I found it. It does show that we did receive  
10 that desk trim item. It's identified as number 506.

11 Q. Correct.

12 A. I do show that we did receive the item in  
13 February.

14 Q. And was any analysis done on that item?

15 A. I don't believe that any was requested on that  
16 particular item.

17 Q. Do you know why it wasn't requested?

18 A. No, I don't. I know that after the consultation  
19 with our DNA technical leader it was decided between the  
20 two parties not to do that particular item. I don't  
21 know why.

22 Q. You don't know why, you weren't part of the  
23 conversation?

24 A. No.

25 Q. They also brought up to you something that the



1 jury has heard described as the Callaway Big Bertha head  
2 cover?

3 A. Yes. I did see that on this list as well.

4 Q. That was also brought and for some reason no  
5 further testing was done on that?

6 A. Correct.

7 Q. And, again, that might have been the result of a  
8 conversation between your technical leader and Captain  
9 Rhodes --

10 A. Correct.

11 Q. -- that you were not involved in? And then there  
12 were shoes, socks, and clothing?

13 A. Yes.

14 Q. Brought up to you?

15 A. Yes.

16 Q. Do you know whose those were?

17 A. Let me see if it's indicated. It states on my  
18 case submission form, do you need me to reference the  
19 page?

20 Q. I think I have it.

21 MR. HAMMOND: Might I approach?

22 THE COURT: Yes.

23 THE WITNESS: I think we have the same page.  
24 Yep. That's it.

25 Q. (Continued by MR. HAMMOND:) You can refer to

1 your page number if you would like.

2 A. Actually, this particular document isn't page  
3 numbered, but I am showing that, it is showing suspect  
4 items found in washing machine.

5 Q. Would you read into the record the numbers  
6 associated with those items?

7 A. Sure. We have it identified as item 607 through  
8 610.

9 Q. Do you know where those numbers came from?

10 A. I don't know. They are referred to them as  
11 client items number, I don't know if it is Arizona DPS  
12 or the Yavapai County sheriff's office. I don't know.

13 Q. Do you know what you looked at to see whether  
14 those items you just read, 607, 608, 609, 610, are, in  
15 fact, Steve DeMocker's running clothes and shoes?

16 A. I don't know if I would have any way to discern  
17 that information.

18 Q. So you can't tell us whether those items actually  
19 belonged to Carol Kennedy or to Mr. DeMocker?

20 A. Not based on this page that I'm looking at other  
21 than the information that was written down here by our  
22 evidence custodian.

23 Q. But in any event no additional testing was done  
24 on those items?

25 A. Right.

1 Q. And we'll have to leave for another witness  
2 finding out whether those items were, in fact, Steve  
3 DeMocker's or the victim?

4 A. Yes.

5 MR. HAMMOND: Do we have an item number of  
6 the golf cover?

7 THE COURT: Do you have that?

8 MR. HAMMOND: Yes. It has been identified  
9 as 3500.

10 THE COURT: Thank you, Mr. Hammond.

11 Q. (Continued by MR. HAMMOND:) So setting the  
12 things aside that you know were not done anything with  
13 or not touched at all, we started on a little list  
14 before lunch and let's see if we can't move through  
15 this. The first item was the hair, and I've done a  
16 little list here so that we can, this is just my own  
17 list that I did over the lunch hour with the help of my  
18 friends. It is the list that we talked about this  
19 morning. The first item there was the hair, which is  
20 Item 406; correct?

21 A. I'm showing Item Number 605.

22 Q. I'm sorry, it is Item 605. Let me change that.  
23 You are exactly right. That is 605. And this is the  
24 item that we talked a little bit this morning and I  
25 turned it off a minute, I don't like to leave it on

1 while I'm trying to talk. That item was one that was  
2 brought up and a serology examination was done?

3 A. Yes.

4 Q. Your serologist looked at what had been sent to  
5 you and concluded that it was not a hair?

6 A. Yes.

7 Q. The serologist concluded that it was fiber?

8 A. An apparent fiber. Again, she's not qualified to  
9 state if it is a fiber or not, she can only say what it  
10 appears to be.

11 Q. Do you recall that the sheriff's office, Captain  
12 Rhodes wanted a quick turnaround on this particular  
13 item?

14 A. Yes. I do recall that.

15 Q. And you all did comply with that, you wrote and  
16 the company sent out a report?

17 A. Yes.

18 Q. It looks like the item was sent up on the 5th of  
19 March?

20 A. Let me double-check that. Yes. It appears that  
21 was received on March 5th.

22 Q. And your report, which was introduced this  
23 morning, was sent out on the 11th of March?

24 A. Yes.

25 Q. And this is the report itself, which is Exhibit

1 3236. By the way, how does Sorenson send these reports  
2 out?

3 A. I believe in this case we sent them through what  
4 we call an FTP website. Essentially what that is the  
5 client gets, from my understanding, again, I've never  
6 sent it out myself, but from my understanding they  
7 receive an e-mail with a link to a website and a  
8 password and log in and they go to this secured website  
9 and they enter their password and are able to download  
10 the information.

11 Q. And so in this case, Captain Rhodes is sitting in  
12 his office, could actually go to his computer and pull  
13 down the report?

14 A. That is my understanding, yes.

15 Q. Simultaneously with the date that it is sent?

16 A. I believe that's correct.

17 Q. And in this case, as we have, we see in Exhibit  
18 3236, Sorenson concluded that there was no apparent  
19 biological material present, therefore, no testing was  
20 performed?

21 A. Yes.

22 Q. And you didn't do a reexamination yourself of the  
23 conclusion that Stephanie masters came to?

24 A. That's correct.

25 Q. And why did you not do an independent review of

1     that item?

2           A.   Stephanie Masters is a qualified serologist,  
3     which includes her capability to examine hairs and to  
4     determine if they are suitable for DNA testing, I didn't  
5     find the need to.

6           Q.   You thought that it must have been pretty clear  
7     that it was not a hair?

8           A.   Yes.

9           Q.   Did you ever at any point in time find out what  
10    happened to item that the initial records indicate was a  
11    hair?

12          A.   My understanding is that the hair was actually  
13    consumed at the Arizona Department of Public Safety and,  
14    therefore, was not in the envelope that we received.

15          Q.   How did you find that out?

16          A.   I just, I heard from Stephanie Masters. I don't  
17    know how she found out.

18          Q.   But even at the time of your interview you were  
19    not aware of what had happened?

20          A.   No. I was not.

21          Q.   You would agree that a human hair can be under  
22    some circumstances a very important piece of evidence?

23                   MR. PAUPORE: Objection. There is nothing  
24    in evidence that supports it is a human hair or what  
25    kind of hair it is at all.

1 THE COURT: Overruled. You may answer that.

2 THE WITNESS: Can you repeat the question?

3 Q. (Continued by MR. HAMMOND:) Sure. Generally  
4 speaking, in your field, the examination of human hair  
5 can be under some circumstances a very valuable piece of  
6 DNA evidence?

7 A. I suppose in certain cases it could be.

8 Q. And, particularly, it could be if there was a  
9 root?

10 A. Yes. For DNA testing we really do need to see  
11 that root testing for us to even have hopes of obtaining  
12 a DNA profile.

13 Q. Do you know whether at one time there was a root  
14 on the hair that was consumed by DPS?

15 A. I have some notes from the Arizona DPS in my case  
16 file that I can reference to answer that question, but I  
17 have no direct knowledge of it myself.

18 Q. We'll have a DPS person here, but I take it when  
19 you, when Sorenson received the envelope that you  
20 thought contained a hair, you had no reason to think  
21 that it had been consumed?

22 A. I'm not sure. I don't know at what point it was  
23 discovered that it was consumed. I'm not sure.

24 Q. Do you have any reason to think that it was  
25 discovered before we did the interviews in Salt Lake

1 City?

2 A. I do think it was, yes.

3 Q. Discovered by anyone in your office?

4 A. Yes.

5 Q. By whom was it discovered?

6 A. I don't, I just know that when I went back and  
7 spoke with Stephanie Masters after we had talked during  
8 my interview she told me that it had, to her knowledge,  
9 it had been consumed.

10 Q. Did Sorenson send out a correction of some kind?

11 A. A correction for what?

12 Q. For the document that we just looked at that said  
13 that there was an apparent fiber?

14 A. Well, that is what we found, we found an apparent  
15 fiber.

16 Q. And has anyone gone back to look at what that  
17 might have been?

18 A. I'm sorry, I don't understand what you mean.

19 Q. Maybe I'm over simplifying this in my own head.  
20 If the hair itself had been consumed then whatever was  
21 left was not a hair?

22 A. Right.

23 Q. It could have been nothing, but instead of  
24 finding it was nothing, Sorenson found that there was  
25 something there?



1 A. We did find something in the envelope, yes.

2 Q. And that apparent something was described as a  
3 fiber?

4 A. Right. Well, as an apparent fiber, yes.

5 Q. Well, as an apparent fiber?

6 A. Uh-huh.

7 Q. Did anyone ever, after the 11th of March, go back  
8 and try to figure out what that was, what the apparent  
9 fiber was?

10 A. At our laboratory we only do DNA testing, we're  
11 not fiber experts.

12 Q. So the answer is no, no one at Sorenson tried to  
13 figure out how it might have been that you thought you  
14 were getting a hair, didn't get a hair, but got  
15 something that you described as a fiber?

16 A. Well, as I said, we were informed that the hair  
17 had been consumed and that's why it wasn't present in  
18 the envelope.

19 Q. And you weren't interested in finding out then  
20 what was left in the envelope?

21 A. We did, we looked at what was left in the  
22 envelope and we made a report about it.

23 Q. And that, as far as you were concerned, that was  
24 enough?

25 A. Yes.

1 Q. And, in fact, when you wrote your report in April  
2 you simply included the line about that hair being an  
3 apparent fiber?

4 A. Yes.

5 Q. You didn't say that the hair had been consumed  
6 prior to the time that you received the envelope?

7 A. Well, again, I had no direct knowledge of that,  
8 so we did write about what we had direct knowledge  
9 about. It was an apparent fiber, not of any biological  
10 concern, and, therefore, didn't do any testing on it.

11 Q. Just a matter of curiosity, when things like this  
12 happen, when one of your clients sends you something  
13 that they think might be relevant and have biological  
14 evidence associated with it, and you find out that it is  
15 not there, do you not typically do some follow up to  
16 say, "Hey, we can't find it, where did it go," anything  
17 like that?

18 A. If we get an empty envelope certainly we would  
19 call them and say, "There is nothing in this envelope."  
20 To be honest with hairs, it's not too uncommon for hairs  
21 to get lost, especially if it is one hair. They are  
22 very prone to static in the hair and things like that.

23 Q. And that is one possibility here is when  
24 Stephanie Masters opened the envelope she found that the  
25 hair had in some way been lost?

1       A. Well, she saw that the hair wasn't there and  
2       that, as I said, to our understanding the hair was  
3       consumed at the Arizona DPS Laboratory.

4       Q. But you didn't want to find out about that, I  
5       don't want to pick on you about it, you didn't find out  
6       about that until a lot later?

7       A. I don't know what time they figured that out.  
8       You are asking me questions about things that other  
9       people told me. I don't know when they found out.

10      Q. But you then wrote a second and a third report  
11      that we will look at, one on the 14th of April and the  
12      509 one on the 27th of April that you simply continued  
13      to say that there was an apparent fiber in the envelope  
14      but no hair?

15      A. Correct.

16      Q. No investigation was done or reported by you to  
17      indicate what had happened to that, to that hair?

18      A. That was, that is not our duty in this case.

19      Q. Okay. Let's talk now about the second item,  
20      talked a little bit about it before lunch, the lithium  
21      battery. You do recall that a lithium battery was sent  
22      to you?

23      A. Yes.

24      Q. And you were told that that battery belonged to  
25      Steven DeMocker?

1       A. I am seeing it. I did review the case notes over  
2 the break and it does indicate that, yes.

3       Q. Okay. And the reason that battery was sent to  
4 you, unlike other items that we've talked about over the  
5 last day and a half and are going to talk a little bit  
6 this afternoon, that particular item was sent to you to  
7 look for Carol Kennedy's blood or DNA?

8       A. Yes. That was what was indicated in the notes  
9 from the meeting.

10      Q. Okay. And so, on that particular item you  
11 wouldn't do and didn't do what you call Y-STR testing?

12      A. That's correct.

13      Q. You did an STR evaluation because you weren't  
14 looking for a man?

15      A. That's correct.

16      Q. Have you found out where that battery was found  
17 and taken into evidence?

18      A. It's not noted in our case file where it was  
19 found and taken into evidence.

20      Q. Here is an exhibit that was entered into evidence  
21 a week or so ago. It's Exhibit 2959. This is a diagram  
22 that was entered into evidence from the, from Steve  
23 DeMocker's condominium. Let's turn it so that it's a  
24 little bit easier to see. The item number you were  
25 given for that lithium battery is Item 408; is that

1 correct?

2 A. That's correct.

3 Q. Do you see 408 here?

4 A. Yes, I do.

5 Q. That item was found and taken into evidence off  
6 of a shelf in Steve DeMocker's condominium at that  
7 location. Okay?

8 A. Okay.

9 Q. And you understand that the purpose for taking  
10 that battery, eventually through the way things happen  
11 in the holding of evidence and being sent to you, was to  
12 see if in some way that battery might connect Steve  
13 DeMocker to the death of Carol Kennedy?

14 A. Yes. I understand that.

15 Q. And you eventually found and concluded that there  
16 was no DNA that could be associated with Carol Kennedy  
17 at all?

18 A. We were not able to exclude her from that sample,  
19 but we were not able to include her either. It was an  
20 inconclusive result.

21 Q. And when you say inconclusive, and we may talk  
22 about that a little bit more with respect to a couple  
23 other items, but inconclusive could mean a couple  
24 different things?

25 A. Yes.

1 Q. It could be that there is insufficient DNA for  
2 you to make any kind of a judgment?

3 A. That's true.

4 Q. And is that what you were saying here?

5 A. No. In this particular case we could make  
6 exclusions. We reported the minor component of this  
7 battery suitable for exclusionary purposes only meaning  
8 we could exclude people but could not include anyone,  
9 again, because we couldn't generate the statistics to  
10 qualify the match.

11 Q. Do you know how many STR, I guess it is a word we  
12 haven't used, but alleles were found on that battery?

13 A. I could take a look.

14 Q. Why don't you do that.

15 A. I count 27, not including the inconclusive DNA.

16 Q. You count 27 that in your judgment might be DNA?

17 A. Yes.

18 Q. And you know that the major contributor to those  
19 was Steve DeMocker?

20 A. According to our findings it matches him, yes.

21 Q. Matched him and it wouldn't surprise you it  
22 matched him because it was a lithium battery from his  
23 cell phone?

24 A. Yes.

25 Q. How many alleles did you report with respect to

1 Virginia Carol Kennedy?

2 A. With regard to her DNA profile?

3 Q. Uh-huh.

4 A. Let me take a look. 21.

5 Q. Now when you said a minute ago that when you say  
6 that something is inconclusive you didn't mean in this  
7 case that you could make no meaningful comparison?

8 A. No meaningful comparison is what we reported. It  
9 was a kind of inconclusive report. I was just trying to  
10 simplify.

11 Q. Those are two different things; are they not?

12 A. Well, when we say, when we generalize the kind of  
13 results we can get from DNA test results we normally say  
14 a match, exclusion or inclusion, those are the, no  
15 meaningful comparison is a more specific kind of  
16 inconclusive result.

17 Q. And the more specific kind of conclusion is  
18 exactly what you arrived at here?

19 A. Yes.

20 Q. That is, that no meaningful comparison could be  
21 done?

22 A. To Virginia Kennedy's profile, yes.

23 Q. Right. That is what you reported?

24 A. Yes.

25 Q. Just to make sure we're on the same wavelength,

1 let's look at your report, to Exhibit 3226, just to make  
2 sure we have it. Here it is. The first, there's the  
3 first page of the report and the lithium battery is  
4 listed on there as Item 11; is that right?

5 A. Yes. That's correct.

6 Q. And then you deal with it specifically on the  
7 second page where you have two paragraphs about this  
8 item?

9 A. Yes.

10 Q. And you conclude it does match the profile of  
11 Steve DeMocker?

12 A. Yes.

13 Q. And you concluded that the minor DNA component  
14 was suitable for exclusionary purposes only and that no  
15 meaningful comparison could be made to Virginia Kennedy?

16 A. That's correct.

17 Q. And that conclusion didn't change at a later  
18 time?

19 A. No.

20 Q. The next item I want to talk to you about is the  
21 cordless telephone.

22 A. Okay.

23 Q. 507. I think this morning you corrected me when  
24 I said it was a cell phone?

25 A. Yes.



1 Q. It is what people called it, a Vtech?

2 A. I was nervous that it was a kind of cell phone  
3 and outdated, being outdated in my cell phone.

4 Q. The chances of you being more deprived of  
5 technology advances is very small. I'm confident of  
6 that. The cordless telephone is the item I wanted to  
7 touch on with you.

8 A. All right.

9 Q. Okay. What did you do with respect to the  
10 cordless telephone?

11 A. That is, we did Y-STR testing on that particular  
12 item.

13 Q. Let me slow you down a little bit. You did Y-STR  
14 testing because you had been asked to look for the  
15 presence of male DNA?

16 A. Let me see what the specific request was on that  
17 one because sometimes we choose to do Y-STR testing  
18 because of the quantifications we obtained. Let me see  
19 if that was specified from the beginning or that was a  
20 decision that we made. The, according to the notes that  
21 I have here, the request was just for testing on the  
22 telephone and during that meeting between Captain Rhodes  
23 and our technical leader, our technical leading decided  
24 we should do Y-STR testing on this particular phone.

25 Q. And, again, the technical leader was Mr. Hellwig?

1 A. Yes.

2 Q. And the testing that you did was to compare the  
3 DNA, the male DNA that you might be able to get off of  
4 that cordless phone first with Steve DeMocker and James  
5 Knapp?

6 A. Yes.

7 Q. And what did you find?

8 A. We found, we got a mixture from at least two  
9 males, the major was attributable to an unknown male,  
10 that major profile, we excluded Steven DeMocker and  
11 James Knapp, both as potential donors of that major  
12 profile. As to the minor Y-STR profile or component, I  
13 should say from that item it was suitable for  
14 exclusionary purposes only. So, again, we could only  
15 exclude people. We did exclude James Knapp and we found  
16 no meaningful comparisons could be made to Steven  
17 DeMocker.

18 Q. So just as with the lithium battery that there  
19 was no meaningful result, no meaningful comparison?

20 A. That's correct.

21 Q. That you could make between Steve DeMocker either  
22 for the minor excluded from the major?

23 A. That's correct.

24 Q. And no meaningful conclusion could be drawn with  
25 respect to the minor?

1 A. That's correct.

2 Q. Did you also compare the DNA profile that for the  
3 major profile against the DNA you have from the  
4 fingernails?

5 A. Yes, we did.

6 Q. And what did you find with respect to that?

7 A. That they were different Y-STR DNA profiles.

8 Q. When you say different, what do you mean?

9 A. They didn't match each other.

10 Q. So what does that mean?

11 A. Two different alleles, two different paternal  
12 lines.

13 Q. So does that mean that you excluded 603?

14 A. Generally we don't, we use the  
15 inclusion/exclusion terms only when comparing to  
16 reference samples.

17 Q. So why is that?

18 A. When you do an inclusion you have to back it up  
19 with statistics and, again, we need a reference sample  
20 to do that. We need one of those sources to be from a  
21 known person ordinarily to generate those statistics.  
22 It's just an internal practice.

23 Q. Even though you have a complete profile to Mr.  
24 603?

25 A. Right. But what are we going to call him in the

1 report, Mr. 603, we have no person to include or  
2 exclude. All we can say is that the two profiles don't  
3 match each other.

4 Q. But the analysis is really the same analysis you  
5 could do whether you knew the identity of Mr. 603 or  
6 didn't?

7 A. It is, it is just a matter of wording, it is how  
8 you word that. You are calling him Mr. 603. I don't  
9 think we could do that in our reports. That wouldn't be  
10 very professional.

11 Q. So why don't you just say the Y-STR profile from  
12 item number 603?

13 A. We did say that. We said that they don't match.  
14 I think we're just debating over semantics here. We did  
15 the comparison and they do not match.

16 Q. And so you don't see that is in any way a  
17 different form of description from saying that someone  
18 either can or cannot be excluded?

19 A. Right, because we have got no person here to  
20 exclude. We have no feasible individual to exclude. We  
21 just have a profile. There's a difference between  
22 making conclusions about people and making conclusions  
23 about profiles.

24 Q. Okay. And so until 603 is found your laboratory  
25 would not do anything other than say it is not a match?

1       A. If it was requested of us and both the defense  
2 and the prosecution agreed they wanted the report to say  
3 that, and our technical leader was happy with it, then  
4 we could change it if you would like.

5       Q. So all we would have to do is enter into an  
6 agreement with the county attorney's office?

7       A. I'm saying that now, but watch my technical  
8 leader would yell at me for saying that.

9       Q. Let's look at the next item that I want to spend  
10 a minute with you on, Item No. 805, the door handle to  
11 the north door.

12       A. I don't have an 805 on my report. Oh, I'm sorry  
13 you are talking about the extract from Item 805, our  
14 Item 8.

15       Q. Correct.

16       A. The actual conclusions on that were on a previous  
17 report, but not on this report. We have a conclusion  
18 but it was just the tube was empty.

19       Q. This is one that you said when you looked at the  
20 extract it was gone?

21       A. Correct.

22       Q. Let's make sure that we all know what you're  
23 talking about. This is the first page of Exhibit 3226,  
24 again, and the line that you were looking at, let's see  
25 if I can, was the second line. This is your Item 8

1     which then became 1417?

2         A.    Yes.

3         Q.    And then became the extract from Item 805?

4         A.    Yes.

5         Q.    What happened to the extract from 805?

6         A.    I believe it was consumed in the previous test  
7     that our laboratory did under part two.

8         Q.    Tell us how that happened.  Let me ask a more  
9     specific question.  That is not the best way to ask it.  
10    When you did your laboratory testing, apparently, had  
11    received something with respect to -- and I'll tell you  
12    that Item 805 is known to people in this case as the  
13    doorknob from the north door.

14        A.    Okay.

15        Q.    And let me just show you where it is so that you  
16    can see it.  Bear with me just a moment.  So here is the  
17    map that's already in evidence as Exhibit 631 that  
18    people in this room have seen a great deal.  Just so you  
19    know, the door that is known as the north door is this  
20    one here, is the door that goes out into the garage.

21        A.    All right.

22        Q.    And what you have been sent was evidence with  
23    respect to the doorknob on that door.

24        A.    Is this the victim's home?

25        Q.    I'm sorry, this is the victim's home.

1 A. Okay.

2 Q. Thank you for asking. And so when you obtained  
3 what you call an extract, had somebody recognized that,  
4 somebody at Sorenson, that the extract had been received  
5 before?

6 A. Let me look in my notes and I'll see if there is  
7 a note on it. Obviously, when I recognized it when I  
8 read the first two parts and found that we had already  
9 tested it. I mean, do you mean before I did my  
10 analysis, before the testing?

11 Q. How about at the time you were doing, your people  
12 were doing the serology?

13 A. I don't know what they were aware of at the time.  
14 Again, I'll look through my notes and see if there is  
15 anything in the notes, but that doesn't mean they  
16 weren't aware of it if it wasn't in the notes.

17 Q. Maybe I can help you.

18 A. I'm just looking through our notes. I don't see  
19 any serology notes regarding those two items. Oh, here  
20 they are. Sorry. Yes. Our serologist was aware. She  
21 identified this as these two items. First of all, she  
22 gave them the same item numbers that they were called in  
23 part two. If she thought they were new item numbers  
24 they would have new numbers and the package was  
25 identified as being called the case number part two.

1 So, yes, she was aware they were tested before.

2 Q. And though she did open them up and look at them  
3 and determine that they were empty?

4 A. Yes.

5 Q. Why did she do that?

6 A. It is our serologist's job to prepare a sample  
7 for DNA sample and with extracts that we receive because  
8 we receive extracts from other laboratories quite often.  
9 It is their job to document how much liquid is remaining  
10 in the tube.

11 Q. Did you receive anything else with respect to the  
12 doorknob on that north door?

13 A. As far as actual evidence items?

14 Q. Yes.

15 A. Let me see.

16 Q. Either the doorknob itself or a swab?

17 A. Give me just a moment. We had several  
18 submissions in this part, so give me just a minute to  
19 flip through all of them, unless you know which document  
20 would have it.

21 Q. I think the answer may be --

22 A. Okay. I do see we have swabs of door handle of  
23 north hallway to the garage door number 805. They were  
24 submitted to us.

25 Q. What happened to them?



1       A.   Apparently we did not test those particular  
2 items.

3       Q.   Now how could that be?

4       A.   I don't know.  We received the extract and we  
5 were going to test the extract.  We found the extract  
6 tube was empty.  We reported that.

7       Q.   And you also had the swab, but nobody tested the  
8 swab?

9       A.   Doesn't appear that they did, no.

10      Q.   Did the swab eventually go back to DPS?

11      A.   I actually don't have the returned documents  
12 printed out.  We've got up until the analysis is done as  
13 far as chain of custody goes, that is in the case file,  
14 and the return documents are completed at a later date.

15      Q.   Was there ever a time when somebody noticed or  
16 brought to your attention that there had been an  
17 expectation by law enforcement that someone was going to  
18 do a further examination of the north door?

19      A.   You know, we did do additional testing in this  
20 case.  I could take a glance at my other reports and see  
21 if we did anything.  I don't have those complete case  
22 files that would document anything like that.

23      Q.   Let me ask you a different question.  I'm not  
24 asking you, I think we've all seen what's been done  
25 since and nothing has been done on this?

1       A.   Actually, I might want to check my reports and  
2   see if we tested them in the future after these were  
3   completed.  I don't know if they were done or not, I'm  
4   assuming that for this part they were tested.  No.  They  
5   were not.  But whether there was a previous report, I  
6   would have to look at a previous report.

7       Q.   And if --

8               MR. PAUPORE:  I hate to interrupt, Mr.  
9   Hammond, but may we approach?

10              THE COURT:  Yes.

11       (Whereupon, a sidebar discussion is held off the  
12   record.)

13              THE COURT:  Thank you, ladies and gentlemen.  
14   Again, if you do want to stand and stretch, move a bit  
15   when we have the sidebars, please feel free to do that.

16       Q.   (Continued by MR. HAMMOND:)  Ms. Brown, let's  
17   spend just a minute talking about nomenclature.  Okay?

18       A.   Okay.

19       Q.   The way that you and your profession and Sorenson  
20   business name and label the things that you receive?

21       A.   Okay.

22       Q.   Let's talk about the doorknob.  You, in your  
23   report in April, you acknowledge that Sorenson had  
24   received an extract?

25       A.   Yes.

1 Q. Okay. When you say you had received an extract,  
2 what had you received?

3 A. An extract is the DNA floating neutral solution  
4 in some kind of tube.

5 Q. It's actually, you've already gone through what  
6 we know of, and what you've described as the serology of  
7 things?

8 A. Yes.

9 Q. So in the course of serology, the something was  
10 obtained at one time and that became the extract?

11 A. That's correct.

12 Q. And it's the extract that then is used in the  
13 subsequent, what you call, the wet lab phase?

14 A. Right. We don't re-extract it, we pick it up at  
15 quantitation.

16 Q. And in this case you said that Sorenson had  
17 received an extract previously?

18 A. Yes.

19 Q. And indeed, if you want to refresh your memory,  
20 you've got there the report that you referred to for  
21 yourself?

22 A. Yes.

23 Q. To help you confirm that, in fact, you had  
24 received the extract?

25 A. Yes.

1 Q. You received it, Sorenson received it sometime  
2 back in 2008?

3 A. I'd have to look at the documents from the  
4 previous part to say exactly when we received it and I  
5 don't know if we sent it back to the Yavapai County  
6 Sheriff's Office, I'm sorry, to the Arizona DPS and then  
7 they sent it to us, but I could dig through here and  
8 see.

9 Q. If you issue a report that says that you received  
10 and analyzed an extract, we can all assume that what  
11 happened is that a tube was sent to Sorenson?

12 A. Yes. Yes.

13 Q. And we, in fact, have pictures, you typically  
14 take a picture?

15 A. Back then, I believe in 2008 when we did the  
16 original testing, we were taking pictures, yes.

17 Q. And so you would have a nice color picture of the  
18 envelope in which the tube, small vial was contained?

19 A. Probably, yes.

20 Q. And then you would show somebody having opened it  
21 and looked inside and then there is the little tube?

22 A. Yes.

23 Q. And your records indicate that you received one  
24 of those tubes with respect to the north doorknob?

25 A. Yes.

1 Q. And that had been tested sometime in the past?

2 A. Yes.

3 Q. And then in 2010, in February, you received an  
4 extract again?

5 A. Again, let me see here. I don't know if we  
6 received it again or if we still had it. I'm not sure.  
7 It looks like we did receive it again from the Arizona  
8 DPS.

9 Q. And so when you received it again you discovered  
10 that it was empty?

11 A. Yes.

12 Q. And it was empty because the last time you had  
13 the extract it had been consumed?

14 A. I don't know if we consumed or it was tested  
15 in-between, I'm not sure. But, yes, at some point  
16 during the testing it was consumed.

17 Q. So sometime before it got back to Sorenson in  
18 February of 2010 it had been consumed?

19 A. Yes.

20 Q. Okay. Did you also receive, let me ask you  
21 again, did you also receive a swab?

22 A. Of the doorknob, yes.

23 Q. Yes?

24 A. It appears that we did.

25 Q. And it appears that you received that in February

1 of 2010?

2 A. Yes, it does.

3 Q. When Captain Rhodes brought other material up to  
4 you?

5 A. Yes.

6 Q. And the swab is actually, and the jury have seen  
7 these, they're -- why don't you describe what the swab  
8 is so that we have it clearly on the record.

9 A. I don't know. The serologist didn't look at that  
10 particular swab. So other than saying it is a swab I  
11 don't know exactly what it looked like.

12 Q. So, generally speaking, when you think about, you  
13 said you knew something about DNA on doorknobs, when  
14 somebody says a swab of a doorknob, what do you think  
15 of?

16 A. I think of either one swab or multiple swabs  
17 taken of the doorknob.

18 Q. They look like some of these Q-tips like things  
19 that we've seen in court?

20 A. It would be a one ended Q-tip with a very long  
21 tip, if you will, that is ordinarily what the swabs look  
22 like.

23 Q. So when your records indicate that you received a  
24 swab in 2010, that was brought up by the Yavapai County  
25 Sheriff's Office, you would assume that there was an

1 envelope somewhere with a little one ended Q-tip in it?

2 A. At least one, I would assume, yes.

3 Q. Could have been more than one, but there would  
4 have been at least one?

5 A. Yes.

6 Q. And your records tell us only that it was never  
7 tested?

8 A. That's correct.

9 Q. And you can't tell us why?

10 A. No. I don't know if it was a miscommunication.  
11 I don't know if our serologist didn't understand that  
12 she was supposed to test the extract and the swab or it  
13 was decided at a later point just to test the extract.  
14 I'm not really sure. As you said before, I wasn't a  
15 part of that testing process.

16 Q. But in any event, at least in 2010, you were not  
17 able to do any meaningful analysis of anything related  
18 to that doorknob?

19 A. We didn't do it in 2010. We did do some testing  
20 in 2008.

21 Q. Okay. But nothing when this, when the swab and  
22 the extract were sent back for the reasons you've  
23 already told us?

24 A. Right.

25 Q. Let's talk now about the --

1       A. Oh, I'm sorry. I do have a note here. I  
2 apologize. I completely glanced over this. According  
3 to the information that we have here, and, again, this  
4 is a case note that's written by our evidence custodian  
5 on the date that we received the extract from the  
6 Arizona Department of Public Safety. There is a note  
7 that says Item 805 was consumed.

8       Q. Item 805 being the --

9       A. The swab.

10      Q. Are you sure it is the swab and not the doorknob  
11 itself?

12      A. She has got extract 1417 is from Item 805. Item  
13 805 was consumed is the specific note. I would read  
14 that to mean that the swab was consumed.

15      Q. So does that mean that the swab was not brought  
16 back to you?

17      A. We may have gotten a package with a stick in it  
18 where the swab was consumed. It is not common practice  
19 to throw away evidence in our industry. We even keep  
20 them even if the item has been consumed.

21      Q. Let's think about that for a moment. The note  
22 that you are referring to is the case note?

23      A. This is a different one dated March 31st.

24      Q. Let me see that one.

25      A. This is a list of the extracts that we obtained



1 from the Arizona Department Of Public Safety.

2 Q. And what you're looking at is the line that says  
3 extracts for two items and one of those is from 805?

4 A. Uh-huh.

5 Q. And it says Item 805 was consumed?

6 A. Yes.

7 Q. So if that was true on the 31st of March, why  
8 would somebody be sending you a swab back, specifically  
9 Captain Rhodes, in February of 2010?

10 A. He may not have had knowledge that it was  
11 consumed. I don't know. You would have to ask him.

12 Q. So that could be the issue, he just may not have  
13 known that it had already been consumed?

14 A. That's correct.

15 Q. Just like he might have not known that the  
16 extracts had already been consumed?

17 A. That's true.

18 Q. Okay. I'm just going to spend a minute on this  
19 next one, on the washer hose. I think you've already  
20 told us all we need to know about this. In, in your  
21 book it is Item 406, 426?

22 A. 426, yes.

23 Q. And you told us that item was also brought to  
24 your lab by Captain Rhodes and that it was never tested?

25 A. It was -- well, the extract of that item, again,

1 was tested back in 2008. It was not tested in 2010.

2 Q. And I think you said on direct examination that  
3 somebody opened the item up and looked at it and --

4 A. Yes.

5 Q. -- and determined that it wasn't suitable for  
6 further testing?

7 A. Not that it wasn't suitable, but extremely  
8 cumbersome to test and I don't know the conversations  
9 that took place, but according to the notes and their  
10 desired results or their question that they want  
11 answered from this item is that it appears that we  
12 already did the testing to answer that question. Again,  
13 unless they were just desiring us to take new swabbings  
14 of it.

15 Q. And you don't know what the conversations were  
16 that led to the decision that they were not going to do  
17 any further testing?

18 A. No, I don't.

19 Q. And you understand that the purpose for seizing  
20 the washer hose and cutting it up was the possibility of  
21 finding the victim's DNA?

22 A. Yes. That's my understanding.

23 Q. Let's move on now to the fingernails. The next  
24 item that you reported on and spent time on here is what  
25 we've now called many times Item 603?

1 A. Yes.

2 Q. From the left-hand fingernails of the victim?

3 A. Yes.

4 Q. Correct? And with respect to that, again, you  
5 were not involved at all in the serology portion?

6 A. That's correct.

7 Q. You know that serology, that is the scraping of  
8 the fingernails was done by someone who works for you?

9 A. The swabbing, yes.

10 Q. And that Nora Wooden introduced earlier was there  
11 to observe that?

12 A. I wasn't aware exactly what parts of the testing  
13 she was watching, but I did note that she was supposed  
14 to be watching certain parts of the testing.

15 Q. And did you know that she was there pursuant to a  
16 court order with respect to the consumption of these  
17 fingernails?

18 A. I wasn't sure exactly why she was observing. I  
19 did know that she was, that it was, that it was an  
20 agreement made upon in the court in order for Sorenson  
21 to do the testing, that there be a representative from  
22 there from the defense. But as far as the reason why  
23 there had to be a representative there, that I was not  
24 privy to.

25 Q. So you didn't know that it had anything to do

1 with the possibility that the additional serology, the  
2 additional taking of material from those fingernails  
3 might consume?

4 A. I didn't know it was because of the consumption,  
5 no.

6 Q. In any event, the additional swabbing was done of  
7 the fingernails of the left hand?

8 A. Yes.

9 Q. And the processes that you've told us about this  
10 morning occurred with respect to the wet lab process?

11 A. Yes.

12 Q. And resulted in a DNA sample that could be  
13 subjected to DNA analysis?

14 A. Yes.

15 Q. And this particular analysis was what you call  
16 Y-STR?

17 A. That's correct.

18 Q. And, again, as you told us you were looking for  
19 the presence of male DNA?

20 A. That's correct.

21 Q. And you told us that you found one major  
22 contributor?

23 A. Yes.

24 Q. And we know that it was not Steven DeMocker?

25 A. That's correct.

1 Q. And it was not James Knapp?

2 A. That's correct.

3 Q. Let's talk for just a minute while we're on the  
4 major contributor about what can be done with complete  
5 profiles. You said a couple times that a complete STR  
6 profile could be submitted to CODIS?

7 A. That's correct.

8 Q. Do you know how many points of reference you have  
9 to have, how many alleles and how many loci you have to  
10 have in order to submit a profile to CODIS?

11 A. It varies state by state. As far as uploading  
12 into the national database they have, what they require,  
13 ten loci, and then they have what is called the 4 X 4  
14 rules which indicates you can have up to four of those  
15 loci contain up to four alleles but that the remaining  
16 six must contain alleles called obligating alleles,  
17 meaning they are known to have come from the presumed  
18 source of the profile.

19 Q. Do you know that the STR profile initially  
20 obtained by DPS was submitted to CODIS?

21 A. Yes. I did see that in my notes.

22 Q. Okay. So you understood that there had already  
23 been a relatively complete STR profile done before the  
24 fingernails ever came to you?

25 A. That's my understanding, yes.

1 Q. Okay. And did you also have an understanding of  
2 how the fingernails had been swabbed previously?

3 A. I actually, before coming here, did look in my  
4 notes to see if there was any indication of how the  
5 sample was taken and I did not find any indication.

6 Q. So you would not have known, if it turns out to  
7 be the case with other witnesses, that half of each  
8 fingernail of the left hand was swabbed?

9 A. I have no knowledge of how they swabbed it, no.

10 Q. But you do have knowledge from your review of the  
11 reports of how the swabbing was done this time?

12 A. Yes. We did our swabbing at our company, yes.

13 Q. And the way you did it was to swab the complete  
14 fingernail?

15 A. The complete underside of the fingernail, yes.

16 Q. What you call the concave --

17 A. Yes.

18 Q. -- portion of the fingernail? And that resulted  
19 in a what you call a Y-STR profile?

20 A. Yes.

21 Q. And it was a complete profile?

22 A. I believe, I don't believe we actually identified  
23 the major alleles, but if I look at it I could tell you  
24 if I identified it. Let me see if I put it in my  
25 report.

1 Q. Maybe we can talk about that for a minute.

2 A. Okay.

3 Q. Your profile, when I say complete, what I think  
4 of is that at all of these locations that you talked to  
5 us about yesterday you said there were 16 --

6 A. Uh-huh.

7 Q. -- locations, if there was evidence of DNA at  
8 every one of those locations?

9 A. Yes.

10 Q. So that is what I have in mind when I say it is a  
11 complete profile.

12 A. Can I tell you what I have in mind when I say a  
13 complete profile?

14 Q. Absolutely.

15 A. When we're talking about major and minors, you  
16 have to go locus, bi-locus or for each of the 16 places  
17 on the DNA you have to see if you can pull out a major  
18 donor. You can't always do it in every location. If I  
19 were to say a complete major profile, that means I would  
20 have to be able to declare a major donor at every one of  
21 those 16 sites.

22 Q. And did do you that?

23 A. I didn't call it complete in my report. I just  
24 said that the profile was obtained, a major profile was  
25 obtained, because we didn't at the time pull out which

1 alleles were the major donor because we didn't have, we  
2 didn't have a need to.

3 Q. And that's worth spending a minute on. You said  
4 on direct, and you may have said it on cross today, that  
5 you did compare the major donor --

6 A. Yes.

7 Q. -- with Steve DeMocker, with James Knapp. Did  
8 you ever write out in your analysis and the tables that  
9 you've done what that major profile is?

10 A. No. We did not.

11 Q. And why is that?

12 A. Well, with our laboratory ordinarily, if we  
13 obtain an unknown profile, like we did in this case, one  
14 of two things is going to happen. Either at a future  
15 date we'll obtain a reference sample that will match  
16 that major donor, in which case we have to do  
17 statistics, and then we need to indicate what the major  
18 profile is to show what we did statistics on, or that  
19 profile is going to get uploaded into CODIS and the  
20 state administrator, at whatever lab gets that profile,  
21 will want to independently determine what the major  
22 profile is. So, in either situation, when we have an  
23 unknown profile that doesn't match anyone, there is no  
24 need for us to mark and indicate what the major profile  
25 is.



1 Q. Does it not concern you at all, as the person who  
2 drafted the reports, that your reports say in several  
3 places that you identified a major profile?

4 A. No. It doesn't concern me.

5 Q. So you would expect that readers might know that,  
6 even though you say you have a major profile you haven't  
7 called it a complete major profile?

8 A. It could have been an oversight on my part, not  
9 putting the term complete; but, again, I was not making  
10 that marking, that distinction at the time. So, no, it  
11 doesn't concern me.

12 Q. So when you get around to doing comparisons  
13 between the, what you call the major donor, don't you  
14 have to at least, in your, in eyeballing your results,  
15 figure out what the major profile is?

16 A. Yes. I did do that with the graphs.

17 Q. But you didn't do it in a summary?

18 A. That's correct.

19 Q. In the summary form that you developed you simply  
20 list all of the alleles you found at every loci?

21 A. That's correct.

22 Q. But you also had an electropherogram, you call  
23 them a graph?

24 A. Yes.

25 Q. But they're, really the technical term is

1 electropherogram?

2 A. Yes.

3 Q. And that electropherogram was a printout or a  
4 readout?

5 A. Yes.

6 Q. Of what your computer found to be the precise  
7 alleles at each of those 16 locations?

8 A. Yes.

9 Q. And so you could sit at your desk and go through  
10 that document, that electropherogram; correct?

11 A. Yes.

12 Q. And you did?

13 A. Uh-huh. Yes.

14 Q. And based upon that you determined what you  
15 believed the major profile to be?

16 A. Yes. I've identified that there is definitely a  
17 major profile.

18 Q. And you identified, at least to your own  
19 satisfaction, what the major profile looked like at  
20 every location?

21 A. Yes.

22 Q. But you didn't write it down in a separate table?

23 A. Correct.

24 Q. Because that's the Sorenson policy?

25 A. Because it wasn't necessary at the time. You

1 have to understand that there can be debates between the  
2 analysts and the technical reviewer over, "Well, you  
3 shouldn't have called the major profile at this locus,  
4 but you should have it at this locus." You can get into  
5 semantics with that if we need to do that to generate  
6 statistics and make sure that we agree and make sure it  
7 is proper and appropriate for the statistical  
8 comparison. There is no statistical comparison, there  
9 is no point in going through that exercise. I may think  
10 there is a 14-major Y-STR profile, you may think it is  
11 only a 12 locus DNA profile, but you can exclude the  
12 person either way. It's, there's not going to be that  
13 much difference.

14 Q. Well, it becomes a little bit problematic,  
15 doesn't it, when you move from the major profile to the  
16 minor ones?

17 A. Not really because when you are excluding someone  
18 from the minor profile you are essentially excluding  
19 them from the entire mixture because there can be  
20 overlap with the major profile. So if your reference  
21 sample has a peak that is in the major DNA profile, you  
22 still cannot exclude them from the minor because there  
23 can be DNA overlap.

24 Q. So when you write a report and say that someone  
25 can be excluded from the minor, you have found that

1   there is no -- well, let me ask it differently.  When  
2   you say in your report that you can exclude someone as a  
3   minor contributor, as you ultimately did with Steve  
4   DeMocker, what analysis did you have to go through if  
5   you didn't derive a major profile?

6       A.  It would be the same process whether we have a  
7   major or not.  If you're trying to exclude someone from  
8   a mixture, it's the same process.  Excluding someone  
9   from a mixture with no major is the same process as  
10   excluding someone from a minor component.

11       Q.  And has it occurred to you now, since April of  
12   this year, that there might have been some slippage in  
13   your analysis of the profile because of the way you  
14   approached it?

15       A.  No.

16       Q.  You remember that when we were together we spent  
17   a good long time looking at your electropherogram?

18       A.  Yes.  I recall.

19       Q.  I don't know how much elapsed time it was, but it  
20   was about 20 pages in the transcript?

21       A.  Okay.

22       Q.  And you remember that we went down with you  
23   through your summary profile sheet?

24       A.  Yes.

25       Q.  Location by location?

1 A. Yes. I recall.

2 Q. Asking you to compare Steve DeMocker to James  
3 Knapp?

4 A. I don't recall comparing two reference samples.

5 Q. Not at the same time, but don't you remember that  
6 we went through why you said you could exclude James  
7 Knapp, but could not exclude Steve DeMocker?

8 A. You stated that we compared James Knapp to Steve  
9 DeMocker and I don't recall doing that.

10 Q. You were actually talking about both of them in  
11 about the same 10 or 15, 20 minute period?

12 A. You mean in comparison to the fingernail  
13 swabbing?

14 Q. Absolutely.

15 A. That is not what you said. You had them  
16 comparing to each other.

17 Q. Of course not. If I said that, forget it. What  
18 you were doing was going through the whole profile?

19 A. Right.

20 Q. And telling us why you were confident that you  
21 could exclude James Knapp?

22 A. I don't recall using those words. I told you  
23 that I needed to look at my data explaining the process  
24 and then we broke for the evening. I looked at my data,  
25 you wanted to get together the next day to discuss

1 further issues, and I told you that I was going to be  
2 submitting an amended report because I found the  
3 transposition error.

4 Q. Do you recall in the session that we had on the  
5 first day going down location by location and having you  
6 look at the 603 DNA profile and explaining to us why it  
7 was that you had concluded in your report that you could  
8 not exclude Steven DeMocker?

9 A. I recall doing that and I also recall telling you  
10 at this particular locus I would have to go look at my  
11 data because there is a star here and I don't know what  
12 the star stands for us when we see peaks that might be  
13 present to your detection threshold. We put a star to  
14 indicate they are present on the graph printouts. They  
15 don't always show up. We do a zoom-in in our software  
16 to see what those peaks are.

17 In this case, that was the situation. I couldn't  
18 clearly see what the stars were representing, so I  
19 couldn't explain all the loci. I explain as many as I  
20 could, but I wasn't able to explain all of them. I told  
21 you I would look at that and provide you with a printout  
22 of the blow up and go over it the next day, and we did.

23 Q. And indeed it was that experience, that time that  
24 you spent with Ann Chapman and with me that caused you  
25 to go back and reexamine your findings?

1       A.   To reexamine the data, yes.

2       Q.   To reexamine the data, and you will probably  
3 never know the answer to the question what would have  
4 happened had we not spent that time?

5               MR. PAUPORE:  Objection.  Calls for  
6 speculation.

7               THE COURT:  Overruled.  You may answer it if  
8 you can.

9               THE WITNESS:  I don't know what would have  
10 happened.

11       Q.   (Continued by MR. HAMMOND:)  Let's talk about  
12 what you typically do.  If you, if you write a report as  
13 you've told us, that report goes through a technical  
14 review; correct?

15       A.   Correct.

16       Q.   And it happened here?  It had happened here?

17       A.   Yes.  It went through a technical review.

18       Q.   There was a technical review, there was also what  
19 you call an administrative review --

20       A.   Yes.

21       Q.   -- by a woman named Denise Anderson?

22       A.   She performed the technical review.

23       Q.   And Mr. Hellwig did the administrative?

24       A.   Yes.

25       Q.   So those things were done and the report was

1 issued?

2 A. Yes.

3 Q. In the ordinary course, when you issue a report,  
4 there is no further review?

5 A. I do review it. Again, if it's going to go to  
6 court, I will take the case out, re-review the data,  
7 refresh my memory, and make sure that I can explain to  
8 the jury the findings I look at it.

9 Q. Precisely. So what in the ordinary course would  
10 have happened had it not been for the conversation that  
11 you had with Ms. Chapman and me? You would have put  
12 that report away and in the ordinary course you would  
13 not have looked at it until you were preparing to come  
14 here and talk to this jury?

15 A. That's true.

16 MR. HAMMOND: Your Honor, I think this might  
17 be a good time to break.

18 THE COURT: We will take the afternoon  
19 recess. Ladies and gentlemen, please remember the  
20 admonition, of course, and please be back in the jury  
21 room by ten after 3:00. Thank you.

22 (Whereupon, a recess is had from 2:49 p.m. to 3:12  
23 p.m.)

24 THE COURT: The record will show the  
25 presence of the defendant, all the attorneys, the



1 jurors, and the witness has returned to the witness  
2 stand. Mr. Hammond?

3 Q. (Continued by MR. HAMMOND:) Thank you, Your  
4 Honor. We were talking about the left-hand fingernails  
5 before we broke. Since you weren't involved in the  
6 swabbing itself, do you have any way of knowing how many  
7 different fingernails DNA was found under on the left  
8 hand?

9 A. No. I do not.

10 Q. Did you ever do any examination of your own to  
11 determine whether there was a way today for you to tell  
12 how many fingernails the DNA was under?

13 A. I can tell you how many fingernails we swabbed.  
14 As far as which ones contained DNA, I can't tell you  
15 that.

16 Q. We have all the photographs and it looks like  
17 there are six pieces of fingernails that came up to you  
18 and I assume all of them were swabbed?

19 A. I would have to look at the notes. Would you  
20 like me to confirm?

21 Q. Unless I, you can, if you have some doubt that  
22 they were all swabbed?

23 A. Well, you say six and we normally separate by  
24 hand. I do believe there was a note about one being  
25 broken into two pieces, so yes that make six.

1 Q. So on the left hand for some reason there were  
2 six pieces of nail?

3 A. Correct.

4 Q. Dr. Keen, when he was here, acknowledged that  
5 there were for some reason six pieces?

6 A. Yes.

7 Q. You would assume that even though you were not  
8 there, but the protocol and all your notes suggest that  
9 all those fingernails were swabbed?

10 A. Yes.

11 Q. Swabbed in a single process?

12 A. Yes.

13 Q. That is, if we look at your envelope with the  
14 swabs in it there would not be six swabs?

15 A. Correct.

16 Q. There is almost most certainly one?

17 A. I believe there were two swabs, the wet swab and  
18 the dry swab.

19 Q. Excuse me, always the wet swab and the dry swab,  
20 but essentially one swabbing process?

21 A. Correct.

22 Q. Done on the underside of those nails?

23 A. That's correct.

24 Q. And you did tell us that there was a significant  
25 amount of DNA?

1 A. Significant enough to obtain a profile, yes.

2 Q. And to have a profile that you could do all of  
3 the work that we've talked about in the last couple of  
4 days?

5 A. That's correct.

6 Q. And you know that the nail had been swabbed  
7 before by DPS?

8 A. Yes.

9 Q. And you know that they also obtained a profile  
10 sufficient to submit to CODIS as an STR profile?

11 A. Yes. That is my understanding.

12 Q. Done on the same nails?

13 A. Yes.

14 Q. Have you heard the quantity of DNA described as  
15 fabulous?

16 A. I have not heard that, no.

17 Q. So you haven't heard anyone in DPS in this case  
18 say that that was a fabulous quantity of DNA?

19 A. I haven't spoken to anyone in DPS.

20 Q. Okay. Fair enough. Did you also do an analysis  
21 of the swabbing of the left hand?

22 A. Yes.

23 Q. We're actually getting down to where we are  
24 almost through with this list, but this item is what is  
25 in the records of the case has been Item 611.

1 A. Yes.

2 Q. It was evidence Item 611?

3 A. That's correct.

4 Q. And, again, you were not involved in the actual  
5 swabbing itself?

6 A. No. I was not.

7 Q. But you did do or attempt to do what you could to  
8 develop an STR profile?

9 A. We developed a Y-STR profile.

10 Q. I'm sorry, a Y-STR profile?

11 A. Yes.

12 Q. And you put your conclusions with respect to that  
13 in your report; correct?

14 A. Yes.

15 Q. Just so we have it, you concluded that the, and  
16 this is Exhibit 3226, you concluded that the sample was  
17 so complex that you couldn't make any judgments about  
18 it? Is that too unartful of a way to put it?

19 A. No. It was too complex as well as there being  
20 limited information. Both of those were issues.

21 Q. And we're looking at this item here that is  
22 marked as 10C?

23 A. That's correct.

24 Q. Okay. So you said, ultimately, that the, due to  
25 the limited genetic information, and also due to the

1 complexity of the mixture, no meaningful comparisons can  
2 be made?

3 A. That's correct.

4 Q. Okay. Did you attempt to do any comparison  
5 between the left hand and the fingernails of the left  
6 hand?

7 A. We couldn't make any comparisons with the left  
8 hand.

9 Q. So you didn't even attempt to take a profile of  
10 603, the Y-STR profile, and look at as much as you could  
11 find of the profile of the hand?

12 A. It doesn't work that way. If we say that no  
13 meaningful comparisons can be made to known samples at  
14 all, that means that we can't make any comparisons  
15 inclusion or exclusion. We can't make any conclusions,  
16 any profile that I would compare to that profile would  
17 be an inconclusive result, every single one, every  
18 single time.

19 Q. Okay. Let me ask you to take a quick look at  
20 what we've marked for identification as Exhibit 3244.  
21 Can you identify that document for us?

22 A. Yes. This is our allele summary table for all  
23 the Y-STR results that we obtained, as well as the DNA  
24 profile of Steven DeMocker that we obtained from the  
25 Arizona Department of Public Safety.

1 Q. And is that a profile that you prepared in the  
2 course of your work prior to drafting the report that  
3 we've had here this afternoon?

4 A. Yes, it is.

5 MR. HAMMOND: Your Honor, I would like to  
6 move for the admission of Exhibit 3244.

7 THE COURT: Mr. Paupore?

8 MR. PAUPORE: No objection.

9 THE COURT: 3244 is admitted.

10 Q. (Continued by MR. HAMMOND:) Just so we can  
11 understand what you were just saying, would you just  
12 take a minute and, this is -- let me move this so it  
13 takes up the page here. I think this will give you the  
14 ability to, can you see that pretty clearly?

15 A. Yes. It's all right.

16 Q. There. I think it's about as clear as it's going  
17 to get. So what you do, and this is what you call and  
18 what we've referred to it as the Y-STR profile summary?

19 A. Yes.

20 Q. Your full name up there is Y-filer?

21 A. That's the name of the kit that we use to develop  
22 the Y-STR profile.

23 Q. And this is work you did, you dated it on the  
24 13th of April?

25 A. That's correct.

1 Q. And we've got your name and signature on there as  
2 you do with every page of your work; right?

3 A. Yes.

4 Q. On the left-hand side of this sheet you have  
5 listed all 16 of those loci?

6 A. That's correct.

7 Q. So these are, when we've been talking over the  
8 last couple of days about all of the places along the  
9 DNA strand that your equipment looks at, these are the  
10 tables for all of those?

11 A. That's correct.

12 Q. And then across the top you've attempted to  
13 organize some of the things that you looked at?

14 A. Yes.

15 Q. And by organize, I mean, you've tried to come up  
16 with a table that, and, I'm sorry, but this is not quite  
17 -- let me see. Let me see just so you can read that  
18 part of it. You put on the same table the left-hand  
19 fingernails?

20 A. Yes.

21 Q. The left-hand swab?

22 A. Yes.

23 Q. And then the telephone that we've talked about  
24 earlier?

25 A. Yes.

1 Q. And the right-hand fingernails is the only thing  
2 we haven't talked about yet?

3 A. Right.

4 Q. And then you also had an extract that you told us  
5 about, you talked about on direct examination that you  
6 received from DPS?

7 A. Yes.

8 Q. You had that as your next column; correct?

9 A. Yes.

10 Q. And then you have the reference sample from James  
11 Knapp?

12 A. Yes.

13 Q. And the DPS summary for Steve DeMocker?

14 A. Yes.

15 Q. Okay. So you put all of those on the same table  
16 for what purpose?

17 A. It's just a summary of the data, a summary of the  
18 graphs of what we consider to be the reportable alleles  
19 or the reportable information.

20 Q. And, again, as you told us earlier, because of  
21 the way your company approaches the Y-STR process, you  
22 do not come up with what you identify as a major profile  
23 for any of these?

24 A. That's correct.

25 Q. So, just looking at this document without



1 studying the electropherogram, we wouldn't be able to  
2 figure out which of the various things you find at any  
3 location is the major one?

4 A. That's correct.

5 Q. If we looked at your graphs we might be able to  
6 do that or some expert in the field?

7 A. An expert would, yes.

8 Q. I wouldn't be, but somebody who is an expert  
9 would be able to?

10 A. That's correct.

11 Q. And when I was asking you before if you had ever  
12 compared the swab of the hand of the left hand to the  
13 fingernails and you said no, you said no because as  
14 you've analyzed this data, this second column here --  
15 and let me back up just a little bit here so you can see  
16 the whole thing. There wasn't sufficient data for you  
17 to be able to do anything?

18 A. Well, it was a combination of two things. There  
19 was insufficient genetic information. As you can tell,  
20 the loci that say INC, that's inconclusive, which means  
21 they are inconclusive for the DNA. There are  
22 conclusions that DNA was there, but not detected, and  
23 those stars might be that there is more DNA detected,  
24 the lower detection threshold, but we did see that  
25 additional DNA was present, that is where the limited

1 quality comes from. There is also a complexity factor  
2 here meaning that of the alleles that were detected they  
3 are of such similar height but also low height as to  
4 meaning, no meaningful comparisons to no sample.

5 Q. And so you've just arrayed the data there, but  
6 decided that you could draw no conclusions from it?

7 A. I'm sorry, did you say arrayed?

8 Q. Arrayed, A-R-R-A-Y-E-D, you displayed?

9 A. Yes. We do display the information that is  
10 detected, as well as any inconclusive information that  
11 is detected in this table form just as a summary.

12 Q. By the way, you said that as you get ready for  
13 trial you go back and review things again to make sure  
14 that your conclusions are ones that you are comfortable  
15 with?

16 A. It is more to be able to explain my conclusions  
17 and just refresh my memory on the testing that was  
18 performed so I don't have to be digging through my  
19 report the entire time and I can go directly to where I  
20 know the information is in the case file, to be familiar  
21 with the case file.

22 Q. And this particular question about whether there  
23 was any meaningful analysis that you could do with  
24 respect to the left hand and the fingernails, you're  
25 comfortable that there just wasn't anything you could

1 do?

2 A. Yes.

3 Q. The last, by the way, did you get or did Sorenson  
4 get at any time any swab from the right hand of the  
5 victim?

6 A. I don't believe so, but let me double-check. It  
7 doesn't appear in this part that we received any swabs  
8 in that area.

9 Q. In any of your communications about this case  
10 have you had any ability to gain an understanding of  
11 whether there is a swab of the right hand?

12 A. No. I have no idea.

13 Q. You do know that the right-hand fingernails were  
14 swabbed?

15 A. Yes.

16 Q. And I think you also know that one of those  
17 fingernails had been broken and was so noted at the time  
18 of the autopsy?

19 A. You mean the left hand?

20 Q. Right hand.

21 A. The right hand. I don't know. I don't have the  
22 autopsy report.

23 Q. So you didn't know that until I told you right  
24 now?

25 A. I haven't looked at the serologist report.

1 Sometimes the serologist will note that a fingernail is  
2 broken in half. I thought they noted that for the left  
3 hand as to that is why there were six fragments. I  
4 would have to look at the notes.

5 Q. Can you, I don't think you'll find a note, but if  
6 you want to take the time.

7 MR. PAUPORE: Your Honor, this question  
8 assumes facts not in evidence.

9 THE COURT: Overruled. She may answer it if  
10 she can.

11 THE WITNESS: According to our notes it just  
12 says five apparent fingernails.

13 Q. (Continued by MR. HAMMOND:) And you have no  
14 information that one of them had been broken off at the  
15 time, at least observed at the time of the autopsy?

16 A. No. I have no information about what happened at  
17 the autopsy.

18 Q. And no information in your notes there with  
19 respect to why Sorenson was not asked to look at any  
20 swabs of that hand?

21 A. No. I have no information at all about that.

22 Q. But you also looked, in addition to looking at  
23 the right-hand fingernails, you also obtained an  
24 extract?

25 A. Let me see if that's correct. Yes. It does

1 appear that we received an extract from the right-hand  
2 fingernails.

3 Q. And in your list of items that you examined you  
4 actually examined both the right-hand fingernails that  
5 Sorenson swabbed and the extract?

6 A. Yes. It appears we have that as Item 15, extract  
7 from 600.

8 Q. So you did both and just to make sure that we're  
9 finished, this is 600. It is the last item that you  
10 looked at and looking at your notes does refresh your  
11 memory that you looked both at the fingernail swabbings  
12 you did, you, Sorenson did, and at an extract?

13 A. Yes.

14 Q. Done by DPS?

15 A. Yes.

16 Q. Did you consider at some time combining those  
17 two?

18 A. I'm not aware of -- I'm aware in the notes that  
19 there was a request to do that. I don't know if we ever  
20 considered doing it. It was up to our, there's two  
21 notes here. One note states that the request is that  
22 the swabbings and the extracts be combined in order to,  
23 let me get the wording right on this.

24 Q. I can help you.

25 A. In order to raise the probability of getting a

1 profile, so that would indicate that perhaps in our  
2 swabbing we wouldn't get enough DNA to obtain a profile  
3 because, again, as you said before, it had already been  
4 tested. And then, there's a later note that states that  
5 the amplification decisions would be made by our DNA  
6 technical leader, Dan Hellwig, after the quantitation  
7 phase that would let us know how much DNA we got from  
8 our own swabbing. I don't know what discussion went on.  
9 I don't have notes on that, but the ultimate decision  
10 was made to keep them separate. I would presume there  
11 was enough DNA from our swabbing to not need to combine  
12 with the extracts.

13 Q. In your report, when you talk about the  
14 right-hand fingernails you say that, let me just look at  
15 it quickly, this is again 3226 this bottom entry down  
16 here, no male DNA was detected, therefore, no further  
17 testing was performed?

18 A. Yes. That's correct.

19 Q. And then when you looked at the extract of that  
20 same item, Item 600, this is page three of your report,  
21 you say that the Y-STR analysis was conducted on this  
22 item due to the limited genetic information and  
23 inconclusive DNA profile was obtained?

24 A. That's correct.

25 Q. What did you mean by inconclusive profile?

1       A. It means that there was hardly any alleles  
2 detected at all. We had some possibly below threshold,  
3 but not enough to draw any kind of conclusions; so,  
4 therefore, it was inconclusive.

5       Q. And when you determined that the profile provided  
6 you with insufficient data, do you know who went back  
7 and answered the question about combining them,  
8 combining the extract you created with the extract you  
9 received from DPS?

10      A. You mean after this testing was performed?

11      Q. Yes.

12      A. This testing would have consumed the extract, so  
13 there would be nothing to combine.

14      Q. So if you were going to do what you had been,  
15 what had been suggested to you at the outset and --  
16 let's back up a second. When you were looking at your  
17 case notes, what you were looking at were your notes or  
18 your record of the original meeting with Captain Rhodes?

19      A. Yes.

20      Q. And in that meeting the recommendation was made  
21 or the suggestion was made that swabs and extracts be  
22 used to raise the probability?

23      A. Of obtaining a profile, yes.

24      Q. So at some point then the question is did  
25 somebody stop and say, "Well, we've got a low quantity

1 of DNA from our own swab and we have an extract, should  
2 we combine them into a single one?"

3 A. We didn't have a low quantity from our swab and  
4 we had no male DNA. So, adding that it would be purely  
5 female DNA, so there would be no merit to adding that to  
6 the extract from the Arizona lab because we're looking  
7 for male DNA. We're doing a Y-STR test, which will only  
8 detects male DNA. If there is no male DNA in the  
9 swabbing that we took it would essentially be the same  
10 as adding water to the extract, it would have the same  
11 affect, there would be no additional information gained  
12 by doing that.

13 Q. Did someone give any consideration as to how it  
14 was able to be there, had been some amount of male DNA  
15 in the DPS extract and not in yours?

16 A. As to how that could happen?

17 Q. I'm not asking you today, I'm asking you whether  
18 in the process somebody stopped and said, "Well, that's  
19 odd"?

20 A. It's not odd though because it has already been  
21 swabbed by another laboratory. We sort of got the  
22 leftovers.

23 Q. Well, let's talk about that again. Do you know  
24 how the right-hand fingernails were swabbed?

25 A. By the Arizona lab?



1 Q. And by your lab?

2 A. I know how it was swabbed by our lab.

3 Q. What if it turned out to be that the right hand  
4 was swabbed the same way that the left one was by DPS,  
5 by swabbing just one half of each fingernail?

6 A. Well, again, the amount of male DNA in the  
7 Arizona sample was so low we were only able to get an  
8 inconclusive profile. We got hardly any information at  
9 all. It could be roughly luck of the draw that those  
10 sides of the fingernails contained the DNA.

11 Q. Did somebody analyze that information?

12 A. No. We don't make notes that, "Geez, I thought  
13 this today and I'm thinking that is why that happened."  
14 We just put in here notes about decisions that we've  
15 made, this is what we're going to do going forward.

16 Q. Do you have any evidence there that someone in  
17 your lab sat down with anyone at DPS to talk about this  
18 question?

19 A. I don't know if they did or not.

20 Q. You certainly didn't?

21 A. No. I was not involved with the decisions about  
22 the testing at all.

23 Q. And as far as you know there really haven't been  
24 communications between the Northern Arizona DPS lab and  
25 certainly you or the people who worked with you on that

1 project?

2 A. I know there was at least one phone conference  
3 that they did have.

4 Q. And what came from that conference? I was going  
5 to ask you about that.

6 A. I don't know the details of that phone call  
7 except that we asked them to send us the Reagent Blank  
8 and they informed us that Reagent Blank applied to all  
9 samples in the case. That was the only information that  
10 I was communicated directly that came from that phone  
11 call. I don't know what else they discussed.

12 Q. So you know there was at least that  
13 communication, but you don't know whether there was any  
14 communications about combining samples to see if you  
15 could find something either with respect to the right  
16 hand or with respect to anything else that you had both  
17 an extract from DPS and your own swab?

18 A. I don't know if there was any communication with  
19 DPS regarding that issue.

20 Q. Did you talk about trying to do one  
21 cross-comparison and we talked about that earlier  
22 between the phone and the 603?

23 A. Yes.

24 Q. No other cross-comparisons were done by you?

25 A. I don't believe so.

1 Q. Okay. No other attempts to see if 603 could be  
2 found anywhere else in any of the things that were sent  
3 to you?

4 A. No. I don't believe so.

5 Q. And at the end of the day then, what your  
6 laboratory concluded, at least in lay terms, is that  
7 first of all you had found nothing new that might link  
8 Steve DeMocker to this crime?

9 A. We didn't find any matches with Steve DeMocker  
10 other than to the lithium battery of his cell phone.

11 Q. And as we've talked about earlier, the one thing  
12 that you were sent that should have had Steve DeMocker's  
13 DNA was on it was the battery to his telephone?

14 A. It's not surprising that he would be on his own  
15 cell phone.

16 Q. Apart from that, you didn't find anything in any  
17 of the analysis that you were involved in that would  
18 provide a DNA connection between Steve DeMocker and the  
19 evidence that you received?

20 A. No. We didn't find anything else.

21 Q. You did find though that 603 was very much there,  
22 very much found and in no doubt in your mind there was a  
23 profile, whether you call it a complete profile or just  
24 a full profile, under the fingernails?

25 A. Yes.

1 Q. Of the left hand?

2 A. Yes.

3 MR. HAMMOND: Thank you. May I have just a  
4 moment, Your Honor?

5 THE COURT: Yes.

6 MR. HAMMOND: Thank you very much. I  
7 appreciate you coming all the way down here and being as  
8 patient as we have gone through this complicated  
9 process.

10 THE COURT: Thank you, Mr. Hammond. Mr.  
11 Paupore, redirect?

12 MR. PAUPORE: Yes, Your Honor.

13 MR. HAMMOND: Your Honor, I don't know if  
14 counsel is still in need of a record to be made on the  
15 matter that we talked about.

16 THE COURT: I was prepared to come out and  
17 do that, that is why I was surprised the jury was  
18 present.

19 MR. HAMMOND: Phil left just in time so he  
20 wouldn't have to explain.

21 THE COURT: Not blaming anybody.

22 MR. HAMMOND: Neither am I.

23 THE COURT: I was just puzzled, but I  
24 thought we were going to be -- I don't know. We'll just  
25 have to proceed Mr. Paupore, and get into that and see

1 where it goes.

2 JUROR #2: We can leave and come back.

3 REDIRECT EXAMINATION

4 BY MR. PAUPORE:

5 Q. Alexis, taking you back to what Mr. Hammond was  
6 talking to you about what you call the wet lab work?

7 A. Yes.

8 Q. Do you recall that, do you recall either question  
9 and answer now that a large part of the learning process  
10 involved in DNA analysis is really contained in the lab  
11 wet work?

12 A. Yes. In order to be a qualified DNA analyst you  
13 need to have a basic understanding of what goes on in  
14 the laboratory, even if you are at your desk all day  
15 long performing analysis.

16 Q. And yet to be qualified to be a DNA analyst you  
17 need to know exactly how the process works in order to  
18 learn how you got to do that?

19 A. I have heard of people who have done it in the  
20 past and have learned it in the past and been qualified  
21 as a DNA analyst, having learned all of the testing  
22 procedures, and then at a later date have gone to just  
23 doing nothing but analysis and not performing the wet  
24 work anymore, but I have never heard of a DNA analyst  
25 being an analyst without doing any of the wet work

1 before.

2 Q. That goes to learning the process? Is that fair  
3 to say?

4 A. I think that is fair to say.

5 Q. Does that include the serology?

6 A. Not always. The serology can be separated into a  
7 separate study, if you will.

8 Q. It does include the extraction, quantification,  
9 and amplification?

10 A. Absolutely.

11 Q. In order to be a qualified DNA analyst you have  
12 to actually do that work in order to become proficient  
13 in your discipline?

14 A. As far as I know, yes.

15 Q. You are, you have to be, are you requalified  
16 every year or recertified every year or is it just the  
17 lab that is recertified?

18 A. The laboratory goes through the accreditation  
19 process and we do have an audit every year, but the  
20 analysts have to go through that proficiency test that I  
21 spoke of earlier. We have to do that twice a year.

22 Q. In order for the lab to be accredited, the  
23 analysts have to go through a proficiency test, it is  
24 part of the accreditation for the lab?

25 A. It is.

1 Q. I was going to ask you a question or two about  
2 the fiber. That is item 605. I understood from your  
3 testimony, was there any logical reason that you can  
4 think of that you would need to retest an item that was  
5 determined by Stephanie Masters to be an apparent fiber?

6 A. No. There was no need to.

7 Q. It would be just a waste of time?

8 A. As far as I'm concerned, yes.

9 Q. Mr. Hammond had asked you quite a few questions  
10 about extracts and swabs that are referred to in your  
11 exhibit. Let's see, I don't have it -- it's Exhibit  
12 3236 and that would be your April 27th report?

13 MR. HAMMOND: Excuse me, Your Honor, I think  
14 it is probably because my handwriting is hard to read  
15 and I apologize for that, but it is actually 3226.

16 MR. PAUPORE: 3226.

17 THE COURT: Okay.

18 Q. (Continued by MR. PAUPORE:) The question is  
19 being asked on Exhibit 3226, which is your April 27th,  
20 2010, report about extracts Sorenson Item 7 and 8 and  
21 some swabs. He asked you some specific questions on it,  
22 but you had to go back and refer to your file to be able  
23 to respond to the questions. Do you recall that?

24 A. Yes, I do.

25 Q. Could you have answered his questions without

1 looking back at earlier reports?

2 A. No. I couldn't have.

3 Q. You rely on those earlier reports to answer the  
4 questions that Mr. Hammond posed to you regarding the  
5 extracts and the swabs?

6 A. Yes, I did.

7 Q. And one of those items that we talked about was  
8 the door handle extract. That would be number 8 on your  
9 April 27th, 2010, report?

10 A. If that's item 805, then yes.

11 Q. That is 805.

12 A. Yes.

13 Q. And on your report there was no liquid in that  
14 extract tube for item 805, Sorenson 8, extract from 805?

15 A. Correct.

16 Q. It had been consumed?

17 A. Yes.

18 Q. Also, Item 13 on your report, which the  
19 description is the water hose, again, did you have to  
20 refer back to earlier reports done by Sorenson, not  
21 yourself, but done by someone else at Sorenson to answer  
22 his questions?

23 A. I don't recall if I had to or not.

24 Q. What was your finding on your April 27, 2010,  
25 report regarding Item 13?



1 A. We did not test it.

2 Q. Did not test it. And the reason, actually, the  
3 reason you did not test that, do you remember that?

4 A. Yes.

5 Q. And do you remember what your answer was?

6 A. My answer was that it would be very cumbersome to  
7 test it and that to my understanding we had already  
8 performed the work requested using the extract from the  
9 DPS laboratory.

10 Q. And did you have to refer back to the earlier  
11 report to come up with that answer?

12 A. Yes, I did.

13 Q. Combining extracts, that was towards the end of  
14 Mr. Hammond's examination, have you ever combined  
15 extracts?

16 A. On occasion, yes.

17 Q. It was not done in this case?

18 A. That's correct.

19 Q. That was not your decision?

20 A. Right.

21 Q. Made by your technical leader?

22 A. To my understanding, yes.

23 Q. Your reports that you were looking back at in  
24 order to answer Mr. Hammond's question, what reports  
25 were they?

1       A. Part one and the part two reports. I believe  
2       that the final versions were dated December 8th,  
3       December 9th, respectively, of 2008. I'm sorry.

4       Q. 2008. All right. Those are actually amended  
5       reports?

6       A. Yes, they are.

7               MR. PAUPORE: Phil, if you could pull the  
8       easel up a second?

9               THE BAILIFF: Sure.

10       Q. (Continued by MR. PAUPORE:) Alexis can you see  
11       that --

12       A. Yes.

13       Q. -- from your standpoint? Mr. Hammond asked you  
14       about finding a fabulous amount of DNA under Item 603,  
15       left fingernails of Virginia Carol Kennedy?

16       A. Yes.

17       Q. And do you recall the quantity of DNA that you  
18       found under the, the amount of DNA found under the  
19       fingernails with regard to female DNA?

20       A. Yes, I do.

21       Q. And do you remember what that quantity was?

22       A. It was around 43 nanograms.

23       Q. 43 nanograms?

24       A. Yes.

25       Q. Would that be a fabulous amount of DNA?

1 A. Yes. It would be.

2 Q. Do you recall the amount of or quantity of DNA,  
3 male DNA, found under those fingernails?

4 A. Are you referring to the swabbing that we did or  
5 to the Arizona DPS extract of that item.

6 Q. To the swabbing that you did?

7 A. The swabbing that we did we found .2 nanograms  
8 approximately.

9 Q. .2 nanograms, is that a fabulous amount?

10 A. No. It's not.

11 Q. In fact, the threshold for detection is .15  
12 nanograms?

13 A. For a full profile, yes.

14 Q. For a full profile. You mentioned the swab from  
15 DPS, was there a different quantity of DNA in that swab?

16 A. Yes, there was.

17 Q. And how did that compare to the quantity of the  
18 DNA that you found under 603?

19 A. There was much more male DNA in the Arizona  
20 extract than under the swabbing that we did.

21 Q. Why was that?

22 A. I could postulate, but --

23 Q. You would have to guess?

24 A. I'm sorry?

25 Q. You would have to make a guess?

1       A. I would suppose it was because our swabbing came  
2 after their swabbing.

3       Q. I see.

4               MR. PAUPORE: Your Honor, I don't believe I  
5 have any further questions for Ms. Brown.

6               THE COURT: Thank you, Mr. Paupore.  
7 Questions from the jury. I see some hands. There are a  
8 number of questions. Let me see how many we have and  
9 that will give me an idea of about how long the recess  
10 will need to be, at least an estimate. Phil, any more  
11 questions?

12              THE BAILIFF: No.

13              THE COURT: I need to review these with the  
14 attorney, of course. Ladies and gentlemen, we need to  
15 have a recess to do that. Please remember the  
16 admonition. Please be ready to come back into court at  
17 4:15, and, Ms. Brown, I ask that you be excused from the  
18 courtroom at this time as we review the questions, but  
19 you will be back on the stand as soon as we have the  
20 review again. So recess and again the parties will  
21 remain. Thank you.

22       (Whereupon, a recess is had from 3:57 p.m. to 4:01  
23 p.m.)

24              THE COURT: The record will show the  
25 presence of the defendant and all the attorneys. Is

1   there any need now to make a record on the sidebar, Mr.  
2   Hammond?

3               MR. HAMMOND:   I don't believe so.

4               THE COURT:   Mr. Paupore?

5               MR. PAUPORE:   Yes.   I would like to recover  
6   exhibits previously marked, Exhibits 3232, 3235.   These  
7   are the earlier reports of Sorenson that the witness  
8   said that she reviewed.   I'm getting help from my  
9   colleagues here, but the exhibits 3232 and 3235 she said  
10   that she had parts one and parts two that she had to  
11   refer back in her notes to answer the questions that she  
12   could not have answered the questions without looking  
13   back at that information to answer the questions on  
14   cross-examination, that certainly makes these reports  
15   highly relevant and necessary to complete this witness'  
16   testimony.   The door was kicked off the hinges by Mr.  
17   Hammond on this, on cross-examination on swabs and  
18   extracts, and I think that puts it right in play.

19              THE COURT:   If you would please put that in  
20   very concrete terms for me, exactly how do you think the  
21   jury would be misled about that report, I would really  
22   like --

23              MR. PAUPORE:   Not misled.   They don't have  
24   the reports that she was being cross-examined on to  
25   look --

1 THE COURT: What information would they have  
2 in that report that they didn't get from the redirect  
3 examination? How would that complete the picture, put  
4 it in concrete terms for me, please, Mr. Paupore.

5 MR. PAUPORE: The reports give the  
6 conclusions of what the results were from the testing  
7 from the extracts on the, specifically we're talking  
8 about the 805 extracts. These reports from the  
9 conclusions in them and she was relying on to answer his  
10 questions and she did not have the conclusions in her  
11 report because she looked back and said that they were  
12 already tested. The already tested reports already have  
13 the conclusion and his so she didn't have to do that.

14 THE COURT: Mr. Hammond?

15 MR. HAMMOND: I think this is very simple,  
16 Your Honor. This is what Melendez-Diaz was all about  
17 and the court in that case I think made pretty clear in  
18 a case decided in June of last year that something can  
19 be a business record and as a business record it may or  
20 may not get around the hearsay rule. Whether it does or  
21 not I think for this purpose is immaterial, but a  
22 witness may very well look at something to help them  
23 understand what the background is necessary for them to  
24 address an issue, but if they're going to put in a  
25 report to prove the truth of the matter stated in the

1 report, then we're entitled under the sixth amendment to  
2 confront that witness and that is precisely what the  
3 Supreme Court said. It doesn't matter that it's a  
4 document that was maintained in the regular course of  
5 business, it doesn't matter that it's in her file today.

6 What matters is if they want to have a  
7 witness testify about those conclusions for the truth of  
8 the matter stated we are entitled to confront the person  
9 who did the work and that person is available. I've  
10 interviewed him. They could bring him over here and  
11 they could get in those reports through him, but we have  
12 a right to cross-examine the person that knows the  
13 background of those reports. She doesn't know and she  
14 said that she wasn't involved at all at the time those  
15 reports were done. So, it seems to me it is a pretty  
16 simple matter.

17 THE COURT: Mr. Paupore?

18 MR. PAUPORE: Your Honor, she was asked  
19 specific questions not only about the doorknob, but the  
20 washer hose and she needed to look at those reports to  
21 give the answers. Now, had he not asked the questions  
22 we wouldn't be here talking about it, but that makes it  
23 relevant. Those reports were brought in through  
24 cross-examination, not direct examination. After we had  
25 an objection placed during direct examination when I was

1 trying to get those reports in and it was and the  
2 objection was sustained. This is a whole different  
3 matter now. She was cross-examined on her report and  
4 she needed the information from the earlier reports to  
5 answer the question. That would satisfy the right of  
6 confrontation because Mr. Hammond did cross-examine her.  
7 It was his choice to do it.

8 THE COURT: So you're making an opening the  
9 door kind of argument, I guess?

10 MR. PAUPORE: That is what he did. He  
11 brought the issue into place.

12 THE COURT: Because I'm not hearing specific  
13 rules of evidence and this is why this needs to come in,  
14 it is still hearsay, but are you saying that Mr. Hammond  
15 had her consult hearsay, you didn't object to him  
16 consulting -- I'm sorry, you didn't object to her  
17 consulting the hearsay?

18 MR. PAUPORE: No. I did not. No. I did  
19 not. We established earlier that it was a business  
20 record and not hearsay from that standpoint.

21 THE COURT: The business records are  
22 exceptions to the hearsay rule. It is hearsay.  
23 Business records are hearsay, but it is an exception.  
24 You can look at the common law as to why business  
25 records originally came in.



1 MR. PAUPORE: There is the reliability here  
2 that she had to look back at those reports to answer his  
3 question and she couldn't have answered the question on  
4 redirect without looking at those records. So not only  
5 is it made reliable by both cross and redirect, it also  
6 made them relevant and I would refer to Rule 703.

7 THE COURT: I don't have any problem with  
8 the idea that these reports are relevant. It seems to  
9 me that the cross-examination had to do with what was  
10 done, how thorough was the process, those type of  
11 questions. She referred to the reports and answered the  
12 questions. Why that would then make all the reports  
13 admissible under 703 I don't understand because 703 has  
14 to do with an expert relying on information, which may  
15 not be an admissible form, and then the court has to  
16 decide whether in the interest of justice that the  
17 background information should come in. She answered the  
18 questions, she's testified. At this time I'm going to  
19 sustain. They're now being offered and you're  
20 objecting?

21 MR. HAMMOND: Yes. I am, Your Honor.

22 THE COURT: For those grounds, if someone  
23 has some law on this any more than what I've heard, that  
24 can be presented, Mr. Paupore. Do you have some  
25 argument, but it seems to me you are making an opening

1 the door type of argument, you didn't -- I'd have to  
2 think back. I may have to look at part of the record on  
3 that, but we need to go over the jury questions. So at  
4 this time I sustain the objections. There's a tender  
5 with some legal argument, obviously, about that.

6 Part one: When your lab processes something  
7 like fingernail clippings, are they able to detect  
8 chemical compounds other than DNA, such as those from a  
9 Tyvek T-Y-V-A-C suit?

10 MR. PAUPORE: No, objection Your Honor.

11 THE COURT: Mr. Hammond?

12 MR. HAMMOND: I didn't say anything. No  
13 objection.

14 THE COURT: Is that the reference to the  
15 suit?

16 MR. PAUPORE: It is the bunny suit that Mr.  
17 Sears has.

18 THE COURT: That is the name of the comment  
19 that was being referred to during cross-examination, but  
20 Tyvek, is that the way it is said?

21 MR. SEARS: I think it is T-Y-V-E-K.

22 THE COURT: Okay. Part two: How long time  
23 wise can DNA be detected on an item? Any objection, Mr.  
24 Paupore?

25 MR. PAUPORE: No, Your Honor.

1 THE COURT: Mr. Hammond?

2 MR. HAMMOND: No.

3 THE COURT: Okay. Both of these will be  
4 asked. Part three: In a touch DNA will a rough surface  
5 like on a pistol grip get more or is more likely to  
6 obtain more DNA cells versus a smooth metal surface like  
7 a grocery cart? Any objection?

8 MR. PAUPORE: None from the state.

9 THE COURT: Mr. Hammond?

10 MR. HAMMOND: I don't think it is all  
11 relevant, so I will object.

12 THE COURT: You know, there was testimony  
13 just in general about transfer on guns. I'm going to  
14 allow this question.

15 MR. HAMMOND: Okay.

16 THE COURT: Part four: Referring back to  
17 testimony regarding Item 408, the lithium battery, the  
18 term allele was used. Clarify what the word allele  
19 means in DNA analysis. I would like you to spell it if  
20 people don't object. I assume there is no objection to  
21 that question?

22 MR. PAUPORE: No objection.

23 MR. HAMMOND: No.

24 THE COURT: I'm going to start off by asking  
25 you to spell that term. Five: Do you have any programs

1 databases that you can run these DNA STR profiles  
2 through to find a match? If so, why do a Y-STR if it  
3 cannot be run?

4 There was testimony along those lines she  
5 did talk about that, but any objection, Mr. Paupore?

6 MR. PAUPORE: No, Your Honor.

7 THE COURT: Mr. Hammond?

8 MR. HAMMOND: I think she'll have a hard  
9 time understanding it, but I have no objection.

10 THE COURT: I'll give it a try. Part six:  
11 Could these nanogram amounts, I think that is the  
12 reference up there, could these nanograms amounts found  
13 in Sorenson Number 10B, Agency Item 603, come from  
14 fingernail clippers that weren't sterilized?

15 MR. PAUPORE: No objection.

16 MR. HAMMOND: No foundation at all. I do  
17 object if this is what we were spending time trying to  
18 keep out of evidence this morning.

19 THE COURT: I'm aware of that. Yeah. There  
20 is just not foundation at that level. She didn't have  
21 an opinion in that area. No.

22 When you give long report numbers can you  
23 repeat them two times, please? No. I'm not going to  
24 ask that at this point, but if there happens to be  
25 reference to a report number and there are questions we

1 can try to cover that.

2 MR. PAUPORE: Your Honor, I think when the  
3 witness ran off the T-number for their case number she  
4 did it pretty darn quick. Next time I will ask her to  
5 do it when it comes up again.

6 THE COURT: I'm not planning on asking that,  
7 Mr. Paupore.

8 MR. PAUPORE: That's fine.

9 THE COURT: Did you receive any swabs from  
10 Carol Kennedy's face for transfer material detection?  
11 Any objection?

12 MR. PAUPORE: No.

13 MR. HAMMOND: The answer is no, but I'm not  
14 sure this is sort of the amateur detective question.  
15 The answer is no, but I have no idea what inferences a  
16 juror will draw from that.

17 MR. PAUPORE: I think it is a yes or no.

18 THE COURT: She's gone through everything  
19 that is analyzed a number of times. You know, I don't  
20 know how that could have been left out; don't you?

21 MR. HAMMOND: I might have -- no, there  
22 isn't any.

23 THE COURT: Is there any reason to ask that,  
24 Mr. Paupore, that question?

25 MR. PAUPORE: We can answer the question,

1 but I think the answer is going to be no, but inquiring  
2 minds.

3 THE COURT: Again, if she's testified a lot  
4 regarding things that are not within her personal  
5 knowledge, if it has to be based on her information, it  
6 would only be secondhand. Do you object to this  
7 question?

8 MR. HAMMOND: I do on the ground I stated.  
9 I think it just leads to further speculation. The  
10 answer is she didn't receive anything.

11 THE COURT: That's the real problem at this  
12 point, that there's an objection to the question. She  
13 doesn't have knowledge of that. She has what something  
14 is said on a piece of paper.

15 MR. PAUPORE: I think it goes back to a  
16 juror has a question in his or her mind and it's, I  
17 think this witness can answer the question.

18 THE COURT: You're saying she does have  
19 personal knowledge exactly what was received other than  
20 what she gets --

21 MR. PAUPORE: She has --

22 THE COURT: These items have labels on them,  
23 whether they come in an envelope or a tube, that is how  
24 she gets them. How does she know where they actually  
25 came from? She wasn't there for collection.

1 MR. PAUPORE: A lot of the, every one of the  
2 items have a description, the phone, the handset phone,  
3 and the fingernails, they're all labeled.

4 THE COURT: Well, then if there's a question  
5 were any of the items, do any of the items contain the  
6 label indicating this, then that question can be asked,  
7 that is something she could testify about and not to  
8 take it any further. Mr. Paupore, if you want to ask  
9 that question you can. It has to be in that format, the  
10 type of labeling concerning the labeling that she knows  
11 about.

12 MR. PAUPORE: The question would be do you  
13 receive any samples that were labeled as swabs from  
14 Carol Kennedy's face?

15 THE COURT: Right. Four: When you find  
16 multiple people's DNA, like 603 and 605, why can't you  
17 add more amplifier to give you more to look at?

18 MR. PAUPORE: That's a good question that  
19 neither Mr. Hammond or I thought of. I would have no  
20 objection.

21 THE COURT: Any objection?

22 MR. HAMMOND: No.

23 THE COURT: Part five. Would fingerprint  
24 dust prevent or interfere with collecting or processing  
25 a touch DNA sample like, i.e., like a door handle? Any

1 objection, Mr. Paupore?

2 MR. PAUPORE: No.

3 MR. HAMMOND: That is another foundation  
4 one. I don't think she has any foundation to answer  
5 that one.

6 MR. PAUPORE: It would have to do with the  
7 quality of the DNA sample. I think she can. That is a  
8 complicated topic whether you do the DNA swabbing first  
9 or the fingerprinting first and whether the dust  
10 interferes. There are so many parts to that and we may  
11 get into that with the DPS people, but she has no  
12 foundation.

13 THE COURT: She did testify that she read  
14 and tried to keep up with collection techniques. I  
15 recall testimony to that affect. Mr. Hammond, don't  
16 you?

17 MR. HAMMOND: Yes.

18 THE COURT: Okay. But I don't think she  
19 talked about whether dust from the fingerprinting  
20 process would have any affect on it. She talked about  
21 collection techniques and you can certainly follow up on  
22 that, but I'm going to ask number five.

23 MR. HAMMOND: By the way, on this doorknob  
24 there's no testimony that any fingerprinting was ever  
25 done.



1 MR. PAUPORE: It was done by Aaron Daniel.

2 MR. HAMMOND: Not on this doorknob. She  
3 testified about doing the handle on the back door.  
4 There isn't a shred of testimony about anyone doing any  
5 testimony, any dusting on the door that goes to the  
6 north side.

7 THE COURT: That is certainly appropriate  
8 follow up. Here is something else I want to do. I know  
9 it has not been the process in this case and I mentioned  
10 it when we started out, I'm going to ask a follow up at  
11 the end of each question or at least gage if they're  
12 related. I think there can be more focus if we do it  
13 that way rather than a long train of questions. I want  
14 to do it in these questions; that is, a particular  
15 question where follow up is absolutely appropriate and I  
16 think it should be set off in a manner where it is not  
17 mixed in with other things.

18 MR. HAMMOND: Judge, could we go back to  
19 that bunny suit kind of thing. I think we were amused  
20 by the question.

21 THE COURT: I wasn't really amused by it. I  
22 want to make sure it --

23 MR. HAMMOND: I don't think it is an  
24 appropriate question. There really is no evidence here  
25 that anybody was wearing a Tyvek bunny suit. You

1 remember that was part of the cross-examination of  
2 Officer Juantes when he was speculating about how it was  
3 possible that Steve DeMocker had no DNA on him and Mr.  
4 Sears said, "Well, if he was wearing a Tyvek bunny  
5 suit." I can't imagine anyone who committed this crime  
6 was wearing one of those suits, so I don't think it  
7 ought to be asked.

8 MR. PAUPORE: Your Honor, it was the defense  
9 who brought up the Tyvek suit, too.

10 THE COURT: Once again, this can be  
11 clarified through some follow up. It is part of the  
12 case. There will be a juror just wondering and I don't  
13 know what that means. I don't want to speculate as to  
14 that. The question can be asked and clarified with  
15 follow up if need be. Seven. Part one; can you  
16 determine which DNA goes with which if you get a swab  
17 with more than one person's DNA? Any objection?

18 MR. PAUPORE: No objection.

19 THE COURT: Mr. Hammond?

20 MR. HAMMOND: No.

21 THE COURT: Okay. Part one will be asked.  
22 Part two: When you break down the cells to get the DNA,  
23 does it break down the double helix as well?

24 MR. PAUPORE: No objection.

25 MR. HAMMOND: No objection.

1 THE COURT: How can you tell if something is  
2 true DNA or not or animal versus human DNA; i.e., a dog?  
3 Any objection, Mr. Paupore?

4 MR. PAUPORE: No.

5 THE COURT: Mr. Hammond?

6 MR. HAMMOND: No.

7 THE COURT: Okay. Part three will be asked.  
8 Did you get a full DNA profile from 603, your number  
9 10B, Y-STR? Any objection?

10 MR. PAUPORE: No. I don't believe there is  
11 a question on it, but no objection.

12 MR. HAMMOND: No objection.

13 THE COURT: Part four will be asked. Five.  
14 Where on Carol's hand did item 611, your 10C come from?  
15 Fingernails or somewhere else on hand? Mr. Paupore?

16 MR. PAUPORE: No objection.

17 MR. HAMMOND: She won't know, but I don't  
18 know whether she wasn't involved in the collection and I  
19 guess I didn't make that clear enough. Maybe I ought to  
20 have her say again she wasn't involved in the  
21 collection.

22 THE COURT: And I will ask part five.  
23 Question was handed right there at the end numbered A.  
24 I don't think you have numbers on yours. I call it A.  
25 It is: In the right hand can you tell the type of

1 substance the DNA samples were from, like blood, skin  
2 cells, saliva? Any objection?

3 MR. PAUPORE: No objection.

4 MR. HAMMOND: I think she answered that, but  
5 no.

6 MR. PAUPORE: She did answer it.

7 THE COURT: Okay. I will ask that. So why  
8 don't I just wait here and we'll have the jury brought  
9 back in. We'll all stand when they come in.

10 (Whereupon, the members of the jury enter the room.)

11 THE COURT: The record will reflect that the  
12 jurors have returned to the courtroom. The defendant  
13 and the attorneys are all present all of the attorneys  
14 and Ms. Brown is now on the witness stand. And, Ms.  
15 Brown, I had the jury questions here. I'll ask a  
16 question and then the lawyers can follow up. I may ask  
17 two or three questions before they follow up if they're  
18 related.

19 So, first question. When your lab processes  
20 something like fingernail clippings, are they able to  
21 detect chemical compounds other than DNA such as those  
22 from a Tyvek suit?

23 THE WITNESS: Our company is strictly a DNA  
24 testing company. We don't perform any chemical tests.

25 THE COURT: Mr. Paupore, did you want to

1 follow up on that?

2 MR. PAUPORE: No, Your Honor.

3 THE COURT: Mr. Hammond?

4 MR. HAMMOND: No.

5 THE COURT: Okay. How long time wise can  
6 DNA be detected on an item?

7 THE WITNESS: That's a very common question,  
8 but one that we haven't been able to answer. I can tell  
9 you that I've worked on cases that are 20 years old and  
10 we've gotten DNA from them. What happens is DNA can  
11 degrade over time. If you ever see a dead body sort of  
12 decay over time it's the same process; although, it is  
13 happening on the cellular level. That does happen, but  
14 the more dry and the more cool the sample is the more  
15 likely we are to find DNA on it.

16 THE COURT: Mr. Paupore, follow up on that  
17 question?

18 MR. PAUPORE: Does it depend then on the  
19 environmental condition in which that DNA is located as  
20 to making a determination of how long it could remain on  
21 a particular item?

22 THE WITNESS: Again, I can't answer exactly  
23 how long. I can't predict how long it will last, but it  
24 is the environmental factors that affect the likelihood  
25 of getting DNA from the item.

1 MR. PAUPORE: Does the DNA then degrade?

2 THE WITNESS: It does degrade over time.

3 THE COURT: Mr. Hammond?

4 MR. HAMMOND: One example of what you are  
5 saying is that the stories about six months ago from  
6 Egypt about the discovery of DNA in the tomb of the  
7 Great Pharaoh?

8 THE WITNESS: That's a great example.

9 MR. HAMMOND: And that's at least 4,000  
10 years ago?

11 THE WITNESS: Again, very dry, very cool  
12 atmosphere.

13 THE COURT: Anything else on that point, Mr.  
14 Paupore?

15 MR. PAUPORE: No, Your Honor.

16 THE COURT: Okay. Next question. In a  
17 touch DNA will a rough surface, like on a pistol grip,  
18 give more, or is more likely to obtain more DNA cells  
19 versus a smooth metal surface like a grocery cart?

20 THE WITNESS: That's a very good question.  
21 Again, a lot of it depends on if the individual who is  
22 gripping it, how much they touch it, if they're sweating  
23 when they touch it, if they're natural shedders or not.  
24 All those come to be factors. But if you have the same  
25 person with the same exact handle under the same

1 conditions, I would propose that a rough surface would  
2 collect DNA better than a smooth surface.

3 THE COURT: Mr. Paupore, follow up?

4 MR. PAUPORE: As to the rough surface  
5 reference in a pistol grip, can you get a mixture of DNA  
6 cells?

7 THE WITNESS: You can get a mixture, yes.

8 MR. PAUPORE: Same question for the grocery  
9 cart handle?

10 THE WITNESS: Yes. You can get a mixture.

11 MR. PAUPORE: And it could be from whichever  
12 handled that golf cart before the person was using it at  
13 the present time?

14 THE WITNESS: Yes. That's possible.

15 MR. PAUPORE: Again, it depends upon those  
16 factors that you mentioned, the sweatiness of the hands,  
17 the last time they washed them?

18 THE WITNESS: Yes. All those.

19 MR. HAMMOND: Your Honor, I object to the  
20 last question on 703 grounds.

21 THE COURT: Sustained.

22 MR. PAUPORE: Thank you, Your Honor. That's  
23 all the questions.

24 THE COURT: Follow up on that question?

25 MR. HAMMOND: No, Your Honor.

1 THE COURT: First of all, Ms. Brown, would  
2 you spell the term or the word allele?

3 THE WITNESS: Allele is spelled A-L-L-E-L-E.

4 THE COURT: The question is referring back  
5 to testimony regarding Item 408, the lithium battery the  
6 term allele was used. Clarify what the word allele  
7 means in DNA analysis.

8 THE WITNESS: Certainly. When we use the  
9 term allele we're referring to the version of the DNA  
10 that you have. As you saw on the display of the profile  
11 summary, those are represented by numbers. You may  
12 recall we talked about STRs yesterday, stands for short  
13 tandem repeat, and it is a sequence of DNA that is  
14 repeated a specific number of times. The number of  
15 times that sequence is repeated is that number that  
16 shows up on that profile summary and that is it what we  
17 are referring to when we say allele, we're referring to  
18 that number.

19 THE COURT: Follow up Mr. Paupore?

20 MR. PAUPORE: No, Your Honor.

21 THE COURT: Mr. Hammond?

22 MR. HAMMOND: No.

23 THE COURT: Do you have any programs,  
24 databases, et cetera, that you can run these DNA STR  
25 profile to find a match? If so, why do a Y-STR if it



1 cannot be run? Two questions there, if you would like  
2 can I repeat them.

3 THE WITNESS: Yes.

4 THE COURT: Do you have any programs,  
5 databases, et cetera, that you can run these DNA STR  
6 profiles through to find a map.

7 THE WITNESS: There is the National CODIS  
8 Database. Our lab cannot enter the profiles into that  
9 database, but we can give the profiles to the submitting  
10 agency and then they can request to have those profiles  
11 uploaded into the national database. That is called  
12 CODIS. That is for the STR testing. We, as a private  
13 lab, don't have a separate database, but that doesn't  
14 mean that profiles we generated cannot be uploaded into  
15 CODIS, just that we cannot do it.

16 What was the second question?

17 THE COURT: The second part: If so, why do  
18 a Y-STR if it cannot be run?

19 THE WITNESS: Y-STR does have limitations,  
20 one being it can't be uploaded into CODIS in certain  
21 samples when there are overwhelming amount of female DNA  
22 it is an extremely useful tool without Y-STR. When we  
23 run a Y-STR test on the sample that has a lot of female  
24 DNA, we may not be able to detect the male DNA at all.  
25 For particular sample times, for fingernails are

1 proposed to have a high amount of female DNA or when we  
2 quantitate them they are showed to have a high amount of  
3 female DNA, Y-STR may be the only way to get any  
4 information about the males that contributed to that  
5 sample.

6 THE COURT: Follow up, Mr. Paupore?

7 MR. PAUPORE: No, Your Honor.

8 THE COURT: Mr. Hammond?

9 MR. HAMMOND: Just to clarify, Ms. Brown,  
10 you talked about the National CODIS Database, which is,  
11 as you said, a STR database. You are also aware that  
12 there are state CODIS databases?

13 THE WITNESS: Yes. It is all one system,  
14 but there are different levels, the local level, state  
15 level and national level.

16 MR. HAMMOND: When people talk about  
17 submitting samples for STR testing they will often say  
18 we are going to do a local CODIS search or a state wide  
19 CODIS search or a national CODIS search?

20 THE WITNESS: Ordinarily they are limited by  
21 the DNA profile as well. There are more restrictions.  
22 The higher you go you can enter as far as anything you  
23 want to for the local level than say keyboard search,  
24 but as far as the state it has many requirements, how  
25 many loci you have to have to complete the profile and

1 more strict rules for the national level. That is  
2 usually what limits how far they can search.

3 MR. HAMMOND: When you say you can do a  
4 keyboard search, you can't actually do a keyboard search  
5 as established earlier today, your laboratory is not  
6 empowered to do any comparisons and we don't need to  
7 talk about what a keyboard search is, the bottom line,  
8 your laboratory can't do a search itself?

9 THE WITNESS: That's correct.

10 MR. HAMMOND: You can ask, as you said  
11 earlier, you can ask DPS or a state agency to do it, but  
12 you couldn't do it?

13 THE WITNESS: That's correct.

14 MR. HAMMOND: And then on the Y-STR front,  
15 are you aware that there are, in fact, databases  
16 available?

17 THE WITNESS: I have heard that some states  
18 will maintain their own database. Again, we said that  
19 you can enter the Y-STR profile into CODIS and they'll  
20 maintain the information, they retain it for future use  
21 hoping that one day you might have a searchable national  
22 database, but there is no searchable national Y-STR  
23 database that I'm aware of.

24 MR. HAMMOND: Staying on the state Y-STR  
25 search database, are you aware whether the State of

1 Arizona has a Y-STR database?

2 THE WITNESS: I'm not aware if they have one  
3 or not.

4 THE COURT: Mr. Paupore, anything on that?

5 MR. PAUPORE: No.

6 THE COURT: If you have page six you were  
7 going to ask a modified question with regard to part  
8 three?

9 MR. PAUPORE: Alexis, did you receive any  
10 swabs from Carol Kennedy's face?

11 THE COURT: Remember the phrasing of the  
12 question, Mr. Paupore.

13 MR. PAUPORE: I'm sorry.

14 THE WITNESS: Let me refer to my notes and  
15 see.

16 JUROR #4: Can you repeat the question  
17 because I don't understand what he asked.

18 THE COURT: Mr. Paupore, repeat the question  
19 as modified.

20 MR. PAUPORE: Did you receive a swab as  
21 labeled as coming from Carol Kennedy's face?

22 THE WITNESS: I'm just clarifying one DNA  
23 extract to see what that was an extract of, maybe one of  
24 you can help me. Do you know what Item 426A is supposed  
25 to be? Oh, no wait. I have it right here. It does not

1 appear that we received such a swab, no.

2 THE COURT: Mr. Paupore, did you have  
3 anything else you wanted to ask along those lines?

4 MR. PAUPORE: No.

5 THE COURT: Did you want to follow up, Mr.  
6 Hammond?

7 MR. HAMMOND: No.

8 THE COURT: When you find people's DNA like  
9 in 603 and 605, why can't you add more amplifier to give  
10 you more to look at?

11 THE WITNESS: That's a very good question.  
12 We do attempt to do that, but there is a maximum amount  
13 that we can add to the amplification reaction. If you  
14 get too much DNA in the reaction you get problems in the  
15 graph and make the data uninterpreted, for the major  
16 donor determines how much we add with the fingernail  
17 swabs that we performed. We had a limited amount of DNA  
18 we added everything that we had so the results that we  
19 had were all we had to make assessments with.

20 THE COURT: Follow up, Mr. Paupore?

21 MR. PAUPORE: No, Your Honor.

22 THE COURT: Mr. Hammond?

23 MR. HAMMOND: No.

24 THE COURT: Okay. Would fingerprint dust  
25 prevent or interfere with collecting and processing a

1 touch DNA sample; i.e., like a door handle?

2 THE WITNESS: The only instance that I'm  
3 aware of where fingerprint powder can interfere with the  
4 DNA testing is if it is magnetic fingerprint powder and  
5 the extraction you use rely on magnetic bead, so we do  
6 not use that powder. So the answer would be no.

7 THE COURT: Follow up?

8 MR. PAUPORE: No.

9 THE COURT: Mr. Hammond?

10 MR. HAMMOND: We spoke earlier today about  
11 the doorknob, which is, the evidence item was 805, and  
12 you recall I showed you the map of the home where the  
13 homicide occurred?

14 THE WITNESS: I recall.

15 MR. HAMMOND: And showed you the door that  
16 805 came from?

17 THE WITNESS: Yes. I recall.

18 MR. HAMMOND: Do you have any information  
19 from any source that that doorknob had ever been dusted  
20 for fingerprints?

21 THE WITNESS: No, I don't. I believe the  
22 only information that was sent to us was from the DNA  
23 testing that was done from the Arizona lab. I'm not  
24 aware of any other testing that was done.

25 MR. HAMMOND: Thank you.

1 THE COURT: Mr. Paupore, did you have  
2 anything further on that?

3 MR. PAUPORE: The last part of your question  
4 [sic], what DPS testing were you looking at?

5 THE WITNESS: We --

6 MR. PAUPORE: What did you have?

7 THE WITNESS: We have an entire, let me see  
8 what it is called. We have this very long list.

9 MR. HAMMOND: Your Honor, I think the  
10 witness has answered the question. This is no  
11 information that she received anything, ever indicated  
12 that anything had ever had fingerprint dust on it from  
13 any source, from any of these items.

14 THE COURT: Mr. Paupore, your question  
15 again?

16 MR. PAUPORE: I'm asking what she is  
17 referring to to answer Mr. Hammond's question.

18 THE COURT: Which was just a general  
19 question about what might interfere?

20 MR. PAUPORE: He had mentioned that she  
21 looked at the doorknob picture and he wanted to know  
22 what if anything might have interfered when it was  
23 tested, that doorknob.

24 MR. HAMMOND: That is not what I asked her.  
25 I asked if there was any information, if there had been

1 any fingerprint dust on the doorknob labeled as 805.

2 THE COURT: And your answer to that, Ms.  
3 Brown?

4 THE WITNESS: I had said that the  
5 information that we got from the Arizona lab was as to  
6 the DNA testing that was performed at their lab, not any  
7 other forensic testing.

8 THE COURT: Now Mr. Paupore follow up to  
9 that?

10 MR. PAUPORE: So are you able to know  
11 whether there was any fingerprint dusting involved in  
12 that doorknob?

13 THE WITNESS: No. I'm not able to know.

14 THE COURT: How can you determine which DNA  
15 goes with which, if you get a swab with more than one  
16 person's DNA?

17 THE WITNESS: The only way we can tell that  
18 is if we have a significant split in the quantity of  
19 DNA, in which case we then pull out what we call a major  
20 donor. You heard us talking about the major Y-STR DNA  
21 profile. If there is enough DNA from one person that's  
22 present in a greater quantity than the DNA from the  
23 other contributors, then we can pull that out because  
24 the peaks on the graph would be much higher than the  
25 other peaks and then we can say that those must all go



1 together into a single DNA profile and have come from  
2 one person.

3 THE COURT: Follow up, Mr. Paupore?

4 MR. PAUPORE: Yes. Could you define for us  
5 what you mean by a significant split in the DNA?

6 THE WITNESS: It depends on if you are  
7 talking about the kind of result that you have at the  
8 particular locus. But, generally speaking, you want to  
9 see those peaks at least twice as high as the peaks of  
10 the minor component.

11 MR. PAUPORE: And that information tells you  
12 that there is more than one donor?

13 THE WITNESS: It can, yes.

14 MR. PAUPORE: And that would be the  
15 significant split, the height of the peaks?

16 THE WITNESS: Yes.

17 MR. PAUPORE: How many, was there any  
18 significant splits on Item 603?

19 THE WITNESS: Yes. That is why we declared  
20 a major DNA profile.

21 MR. PAUPORE: How many were there?

22 THE WITNESS: How many major DNA profiles  
23 were there?

24 MR. PAUPORE: No. How many peaks?

25 THE WITNESS: Oh, for the major we didn't

1 identify that.

2 MR. PAUPORE: Was there a DNA split on Item  
3 603?

4 THE WITNESS: Yes.

5 MR. PAUPORE: That split was from the major  
6 to the minor mixtures?

7 THE WITNESS: Yes.

8 MR. PAUPORE: How many were there?

9 THE WITNESS: I'm sorry, how many what were  
10 there?

11 MR. PAUPORE: Splits.

12 THE WITNESS: I'd have to -- that's, again,  
13 I went over this when Mr. Hammond was questioning me.  
14 He was asking what the major donor profile was, what  
15 particular alleles made up major donor profile. I  
16 mentioned that we didn't go through and identify the  
17 particular alleles.

18 MR. PAUPORE: But this is a split between  
19 the major profile and the minor mixture?

20 THE WITNESS: Yes.

21 MR. PAUPORE: My question goes to how many  
22 splits?

23 THE WITNESS: You're basically asking the  
24 same question that Mr. Hammond asked. You are asking me  
25 to identify the major donor alleles when you say how

1 many splits there were. It would have to identify which  
2 loci we could identify. The major donor was not an  
3 assessment we made during the analysis.

4 MR. PAUPORE: Is split different than  
5 mixture?

6 THE WITNESS: When I say split I'm talking  
7 about the peak heights. Usually it is the number of the  
8 alleles at a given locus that lets you know that there  
9 is a mixture present.

10 MR. PAUPORE: Thank you.

11 THE COURT: Follow up, Mr. Hammond?

12 MR. HAMMOND: But if we did haul out your  
13 graphs or your electropherogram, what we would see at  
14 one location after another is a peak height that you had  
15 determined was significantly larger than any of the peak  
16 heights that you saw at that location?

17 THE WITNESS: That's true.

18 MR. HAMMOND: Thank you.

19 THE COURT: Anything else?

20 MR. PAUPORE: No, Your Honor.

21 THE COURT: Next question. When you break  
22 down the cells to get the DNA, does it break down the  
23 double helix as well?

24 THE WITNESS: The double helix that they are  
25 referring to is that DNA is double stranded and it is

1 connected and it's got a turning sort of feature to it,  
2 it looks like a ladder that has been twisted, and when  
3 you break that open that is called denaturing. When you  
4 break those two pieces apart, our organic extraction  
5 that we perform leaves the DNA double stranded during  
6 that dejection process. For the later steps we do need  
7 to denaturement DNA when we need to amplify it that will  
8 happen at the amplification step, not during the  
9 dejection.

10 THE COURT: Follow up, Mr. Paupore?

11 MR. PAUPORE: Does that mean that the double  
12 helix is split at some process in the DNA analysis?

13 THE WITNESS: Yes, it is.

14 THE COURT: Mr. Hammond?

15 MR. HAMMOND: No questions.

16 THE COURT: Okay. Next question. How can  
17 you tell if something is true DNA or not or animal  
18 versus human DNA; i.e., a dog?

19 THE WITNESS: Our DNA is human specific. If  
20 it is not human DNA we will not get a profile.

21 THE COURT: Follow up?

22 MR. PAUPORE: Is there a program that you  
23 use to determine that?

24 THE WITNESS: No. Just the nature of the  
25 chemicals that we use only detects human sequences. I

1 think they've gotten partial profiles from higher things  
2 that people are partially related to. But dogs and  
3 other mammals we don't get a DNA profile for no matter  
4 how much DNA is present.

5 MR. PAUPORE: It is a test that is done to  
6 test if it is human or not?

7 THE WITNESS: Right. It is very DNA  
8 specific.

9 THE COURT: Mr. Hammond?

10 MR. HAMMOND: No.

11 THE COURT: Did you get a full DNA profile  
12 on Number 603, your 10B, Y-STR?

13 THE WITNESS: Yes, we did.

14 THE COURT: Follow up, Mr. Paupore?

15 MR. PAUPORE: And you also received that  
16 mixture that we talked about in the 603?

17 THE WITNESS: I'm sorry, I can't hear you.

18 MR. PAUPORE: And you also detected DNA  
19 mixtures along with that major?

20 THE WITNESS: Yes, we did.

21 THE COURT: Mr. Hammond?

22 MR. HAMMOND: No.

23 THE COURT: Next question. Where on Carol's  
24 hand did Item 611, your 10C, come from? Fingernails or  
25 someone somewhere else on hand?

1 THE WITNESS: That I do not know. We just  
2 received a swab so the swabbing was taken by somebody  
3 else and I don't have that information.

4 THE COURT: Follow up, Mr. Paupore?

5 MR. PAUPORE: Yes, Your Honor. And how  
6 many, again, mixtures did you get on the Item 611, your  
7 10C?

8 THE WITNESS: You mean how many male donors  
9 did we detect?

10 MR. PAUPORE: Yes.

11 THE WITNESS: At least three.

12 MR. PAUPORE: Thank you.

13 THE COURT: Mr. Hammond?

14 MR. HAMMOND: The question asked about  
15 whether some of the DNA could have come from the  
16 fingernails. Your assumption throughout the process is  
17 that the fingernails were separately swabbed?

18 THE WITNESS: That is my understanding.

19 MR. HAMMOND: So when you are thinking about  
20 the hand, again, the left hand, you were thinking about  
21 a swab that had been done of something other than the  
22 fingernail?

23 THE WITNESS: That's my understanding, yes.

24 MR. HAMMOND: Thank you.

25 THE COURT: Can you tell the type of

1 substance the DNA samples are from like blood, skin  
2 cells, saliva?

3 THE WITNESS: We can do those tests for  
4 certain body fluids. We can do a test for blood, semen  
5 and/or saliva. Ordinarily the agencies that requests  
6 the DNA has to request that test. If we feel that it  
7 would be probative for them, meaning that it would give  
8 some value to their case, we ask them if they want it  
9 done. It is an additional fee though, so not all  
10 agencies want it done, and some of them have already  
11 performed that test themselves before sending it to us  
12 so it doesn't need to be done. So, yes, we can do those  
13 tests if they request it.

14 THE COURT: Follow up?

15 MR. PAUPORE: Can you tell where it came  
16 from? Does it come from blood or skin cells or saliva?  
17 Do you have a way of knowing where that DNA came from?

18 THE WITNESS: Do you mean like menstrual  
19 blood or like I cut my arm and I'm bleeding?

20 MR. PAUPORE: Well, the substance itself,  
21 the DNA substance that you tested, can you tell where it  
22 came from on the body?

23 THE WITNESS: I'm sorry, I don't understand  
24 your question.

25 MR. PAUPORE: The question is, can you tell

1 a type of substance the DNA samples are from, like  
2 blood, skin cells, or saliva?

3 THE WITNESS: We can tell if blood or saliva  
4 or semen is present on the item and if we do a DNA test,  
5 if that body fluid is present, it is more than likely  
6 that the DNA came from that body fluids because those  
7 body fluids contain very high amounts of DNA. If we  
8 were not to perform those tests then I wouldn't be able  
9 to tell you necessarily the source of the DNA. Does  
10 that answer the question?

11 MR. PAUPORE: Yes. Thank you.

12 THE COURT: Mr. Hammond?

13 MR. HAMMOND: When you receive, as you did  
14 in this case, an extract, can you tell from the extract  
15 whether that's an extract of blood, semen, or saliva.

16 THE WITNESS: No, we cannot.

17 MR. HAMMOND: When you receive a swab can  
18 you tell whether that swab comes from blood, semen, or  
19 saliva?

20 THE WITNESS: Again, only if we performed  
21 those specific tests.

22 MR. HAMMOND: And in this case, in any of  
23 the work that you were involved in, which is as we said  
24 all work that you did this year, was there ever a time  
25 when you were asked to determine the source of the DNA;



1 i.e., whether it came from blood, saliva, or semen?

2 THE WITNESS: I don't believe so.

3 THE COURT: Mr. Paupore, anything else on  
4 this point?

5 MR. PAUPORE: No, Your Honor.

6 THE COURT: Counsel, may Ms. Brown be  
7 excused as a witness?

8 MR. PAUPORE: State asks that she be  
9 excused.

10 MR. HAMMOND: I believe she can be, but  
11 can't be totally excused at this point.

12 THE COURT: Ms. Brown, you can be excused  
13 from the courtroom, but you are subject to recall. I  
14 want to remind you about the rule of exclusion of  
15 witnesses. I did explain this once, but it does mean  
16 that you cannot communicate with any other witness about  
17 this case or your testimony until the trial is  
18 completely over. It is a good idea not to talk to  
19 anybody about the case until the trial is over; however,  
20 you can talk with the attorneys as long as another  
21 witness is not present. Do you understand?

22 THE WITNESS: I do.

23 THE COURT: You are temporarily excused  
24 anyway, subject to possible recall please. Watch your  
25 step as you step down.

1 THE WITNESS: Thank you, sir.

2 THE COURT: We will go ahead and take the  
3 evening recess. Ladies and gentlemen, please remember  
4 all the aspects of the admonition and follow that  
5 admonition and please be in the jury room by 9 a.m.  
6 tomorrow morning. We'll start as soon as we can after  
7 that.

8 (Whereupon, the jury leaves the room.)

9 THE COURT: The jury is not present. The  
10 attorneys are present. Is it preferable to do the  
11 follow up to each question now that we've done that?  
12 Does anyone have a preference to me? It seems things  
13 focused --

14 MR. HAMMOND: It makes sense.

15 MR. PAUPORE: I like what you did.

16 THE COURT: Part two. I'm not going to  
17 discuss this in detail now, but there is the question we  
18 had yesterday regarding a jury matter and I'm going to  
19 ask that you look at Rule 18.6 and the comments because  
20 I do anticipate having a different procedure with regard  
21 to access to materials, admonitions, and things like  
22 that. So I ask two things or actually direct two things  
23 that you do, please. One, read the preliminary  
24 instructions, particularly the admonition and what has  
25 been given to them closely, and also Rule 18.6 of the

1 rules of procedure. Thank you.

2 MR. SEARS: And the comments to the rule as  
3 well?

4 THE COURT: Yes.

5 MR. HAMMOND: Judge, can I ask just a  
6 question about the starting time tomorrow.

7 THE COURT: 9:00.

8 MR. HAMMOND: Has something happened with  
9 the bridge that was out? I think when we went to 9:15 I  
10 thought it was because of a juror request because of a  
11 bridge being out.

12 THE COURT: You have that question. I think  
13 you all have a copy and --

14 MR. HAMMOND: Is that juror going to be able  
15 to --

16 THE COURT: On Fridays she doesn't have the  
17 problem, just on the other days.

18 MR. HAMMOND: Thank you.

19 THE COURT: Okay. We're in recess. Thank  
20 you.

21 (The proceedings concluded at 4:57 p.m., September 2,  
22 2010.)

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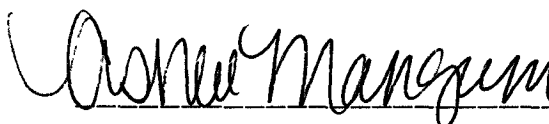
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REPORTER'S CERTIFICATE

The above and foregoing is a true and complete transcription of my stenotype notes taken in my capacity as Acting Official Reporter of Yavapai County Superior Court, Court Reporter #50612, Division VI, at the time and place as above set forth.

Dated at Prescott, Arizona, this 30th day of June, 2011.



ASHLEE MANGUM  
Court Reporter #50612  
Registered Professional Reporter

FILED ON \_\_\_\_\_